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## LIST OF NEW ACCOUNT BOOKS

FOR

# HIGHWAY BOARDS,

Prescribed by the Order of the Local Government Board, dated  
29th April, 1879, and Published by

**SHAW AND SONS,**

FETTER LANE AND CRANE COURT, LONDON, E.C

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### THE HIGHWAY AND LOCOMOTIVE (AMENDMENT) ACT, 1878.

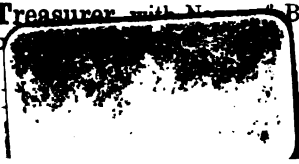
A Consolidated Abstract of The Highway Acts, 1862, 1864; The Locomotive Acts, 1861, 1865, and the Highway and Locomotive (Amendment) Act, 1878, with the Acts in Extenso, Copious Notes, and Index. By JAMES A. FOOT, Esq., M.A., of the Middle Temple, Barrister-at-Law. Price 7s. 6d.

**EXEMPLIFICATION OF HIGHWAY BOARD ACCOUNTS**, in accordance with the General Order for Accounts issued by the Local Government Board, dated 29th April, 1879. By H. LLOYD-ROBERTS, Esq., Barrister-at-Law, and Local Government Board Auditor. Price 8s.

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**CW .U.K.**

**X 625**

PRATT'S  
**Law of Highways,**

COMPRISING

THE HIGHWAY ACTS, 1835, 1862, 1864,  
THE SOUTH WALES HIGHWAY ACTS, & OTHER STATUTES,

INCLUDING

AN INTRODUCTION  
EXPLANATORY OF THE LAW UPON THE SUBJECT;  
WITH NOTES, CASES, AND INDEX;

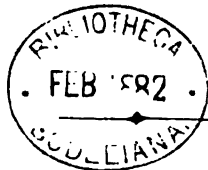
ALSO

THE TRAMWAYS ACT, 1870.

*TWELFTH EDITION.*

BY

SAMUEL PRENTICE, Esq., Q.C.



LONDON:

SHAW AND SONS, FETTER LANE AND CRANE COURT, E.C  
*Late Printers and Publishers.*

1881

LONDON : PRINTED BY SHAW AND SONS FETTER LANE, E.C.

## PREFACE TO THE TWELFTH EDITION.

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THE Law of Highways is in a very complicated state, as there are now so many highway authorities and so many statutes and different laws relating to the subject.

Since 1870, when the eleventh edition of this work was published, there have been important enactments passed relating to highways.

By "The Highways and Locomotives (Amendment) Act, 1878," which, for the sake of brevity, is in this work usually referred to as the H. Act, 1878, the following provisions and alterations have been made :

Justices of a county in quarter sessions when forming or altering the boundaries of highway districts are to form them, as far as practicable, so as to be coincident in area with rural sanitary districts. When so formed, rural sanitary authorities may obtain an order enabling them to exercise the powers of a highway board within their district. Upon the making of such an order any existing highway board for the district is dissolved. All expenses incurred by a rural sanitary authority in the performance of their

duties as a highway board are deemed to be general expenses of such authority within the meaning of the Public Health Act, 1875, ss. 229, 230.

When the rural sanitary authority avail themselves of these provisions and obtain an order enabling them to exercise the powers of a highway board, there will be but one authority, *i. e.* the board of guardians, having the control of both poor and highways within the union.

All expenses incurred by a highway board established under H. Act, 1862, &c., in maintaining highways are now in general chargeable on the district fund instead of to the respective parishes.

The accounts of the highway authority are to be made up and balanced to the 25th day of March in each year. The Loc. Gov. Board have power to prescribe the form in which they are to be made up, and they are to be audited by a poor law auditor.

By the H. Act, 1878, s. 13, certain disturnpiked roads are declared to be main roads, and one half of the expenses (*a*)

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(*a*) By 44 & 45 Vict. c. 72 (passed on 27th August, 1881), s. 1, from and after the passing of this Act sect. 13 of the H. Act, 1878) *post*, p. 266), shall be read and construed as though the following words were inserted therein :—

“Provided further, that no part of such expenses incurred from and after the 29th day of September, 1881, shall be included in any precept or warrant issued by the county authority for the county of Southampton for the levying or collecting within the Isle of Wight of the county rate for the said county.”

of their maintenance is to be paid out of the county rate ; and by sect. 15 of the Act, a road which is a medium of communication between great towns, or a thoroughfare to a railway station or otherwise may be ordered by the justices of the county at quarter sessions to be a main road, in which case one half of the expense of its maintenance will be paid out of the county rate.

Justices of the county at quarter sessions may order a highway authority to maintain or repair a highway where default has been made in this respect, and if such order is not complied with may appoint some one to perform such duty, &c.

New provisions have been made as to unnecessary highways being declared not repairable at the public expense.

Extraordinary expenses of repairing highways incurred by a highway authority by reason of extraordinary weight or traffic may be recovered in a summary manner from the person by whose order such weight or traffic was conducted.

New provisions have been made as to the justices of the county at quarter sessions making bye-laws for prohibiting or regulating the use of waggons, &c., with wheels of which the fellies or tires are not of the prescribed width, &c.

New provisions have been made as to the use of locomotives on highways—as to their weight, construction of their wheels, licensing same, &c.

The provisions in the Public Health Act, 1875, relating to highways, which it has been thought advisable to set out, will be found in Part III.

The enactments relating to disturnpiked roads will be found in Part V.

The Tramways Act, 1870, will be found in Part IX.

Certain orders of the Loc. Gov. Board as to accounts and audit of same, &c., are set out in Part X.

Part XI. contains the Acts relating to highways in South Wales.

S. PRENTICE.

4, ESSEX COURT, TEMPLE,  
*October, 1881.*

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(a) This Act for the sake of brevity is often in this work referred to as the H. Act, 1878.



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# THE LAW OF HIGHWAYS.

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## INTRODUCTION.

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## CHAPTER I.

### Chap. I.

### HIGHWAYS, THEIR NATURE, ORIGIN, &c.

It is said in all the text books that there are three kinds of highways, viz.:—

Highways,  
what.

1. A footway, for foot passengers only.
2. A horse, or bridle way, for horses and cattle, as well as foot passengers: sometimes called "a pack and prime way," because it is both a footway (which was the first, or prime way) (a), and a way for pack horses also; it is called likewise a pack and drift way, because it is used for driving cattle.
3. A cart or carriage way, which includes both foot-way and horse way. It may be generally assumed to

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(a) Co. Litt. 56 a,

Introd. comprehend a drift way also ; but where, on a question relating to a private right of way, a right for carriages was admitted, but the jury negatived a right to drive fat oxen for the purpose of being slaughtered, the Court of Common Pleas refused to disturb the verdict (a). Lord MANSFIELD, C. J., *dub.* CHAMBRE, J., *diss.*

A navigable river, a public ferry, and even a railway, for some purposes, may be also termed highways ; and, in the construction of the H. Acts, the word “highways” is to be understood to mean all roads, bridges (not being county bridges), carriage ways, cart ways, horse ways, bridle ways, footways, causeways, churchways, and pavements (b).

It was formerly said that, in order to constitute a highway, it must be a thoroughfare, and must lead from one town or vill to another, or to a public highway ; and that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village, which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village only, may be called a private way, but not a highway (c). But it seems that any way which has been dedicated to the public generally, and freely used by them at their will and pleasure, may be a highway, whatever may be its termini.

It is not necessary that it should be a thoroughfare. Where a passage leading from a public street to a court consisting of fourteen or fifteen houses belonging to A., and through which there was no thoroughfare (the passage having been paved, at the request of A., by

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(a) *Ballard v. Dyson*, 1 Taunt. 279.

(b) H. Act, 1835, s. 5.

(c) 1 Hawk. P. C. c. 76, s. 1.

the commissioners under a local Act, and lighted by the parish and used by the public), was found by a jury to be a common highway, the Court of Queen's Bench held such finding to be consistent with law (*d*).

And where a footpath led from parish T. into parish S., and the part lying in T. was extinguished by inclosure commissioners, so as to leave the part in S. in reality a mere *cul de sac*, it was held that that part might still remain a highway notwithstanding (*e*).

Every highway which has not been created by statute may be presumed, if it is not capable of direct proof, to have originated in a licence granted to the public by the owner of the soil to use it at their free will and pleasure for the purpose of travelling; and when a dedication to the public is spoken of, it must be understood that it is such privilege of user only, and not the soil itself which has been so dedicated. The soil and freehold still remain in the owner, subject thereto, but the privilege of user once granted is irrevocable. There can be no temporary dedication to the public. It is an established maxim "once a highway, always a highway," until stopped by operation of law (*f*). This subject of dedication will be considered more fully hereafter.

A turnpike road is a highway, and has all the inci-

(*d*) *Bateman v. Bluck*, 21 L. J. Q. B. 406; 18 Q. B. 870; see also *Young v. Cuthbertson*, 1 Macq. H. L. Cas. 455; and *R. v. Hawkhurst*, 38 L. T. 268.

(*e*) *Gwynn v. Hardwick*, 25 L. J. M. C. 97; *Vernon v. Vestry of St. James, Westminster*, 49 L. J. Ch. 130.

(*f*) *R. v. Lordsmere*, 19 L. J. M. C. 220. *Dawes v. Hawkins*, 25 J. P. 502; 8 C. B. (N.S.) 848. Perhaps in case of non-user by the public for a great length of time it might be presumed that a highway has been legally stopped by order of justices, or in some other legal way. If both ends of a highway are legally stopped up so that the public have no access to it, the way ceases to be a highway. *Bailey v. Jamieson*, 1 L. R. C. P. D. 329.

**Introd.** dents of a highway. Though a toll is levied upon it, as an auxiliary fund, to improve it for the general benefit of the public, the inhabitants of the parish or township may still be liable, at common law, to repair it (*a*), and may be indicted for a default in doing so.

But if an Act of Parliament make a road public during a limited period, it is not a public highway repairable by the public after such period has expired, unless it be then dedicated to the public (*b*).

By 37 & 38 Vict. c. 95, s. 10, where by any Annual Turnpike Acts Continuance Act it is or shall be provided that no money shall be expended in the repair of any turnpike road, such turnpike road shall be deemed to be a highway, and shall be repairable as such (*c*).

Highways by  
prescription.

Highways are often of immemorial origin; that is, the period of the commencement of their user by the public cannot be proved by living testimony or other existing evidence.

If all persons, without distinction, have, at their free will and pleasure, for a considerable period, used and enjoyed a way, such way will be presumed to be a highway, and to have been at some time or other granted to the public by the owner of the soil.

To prove such user, the testimony of aged persons who have long been acquainted with the way, who have used it themselves and seen it used by others, who have known it repaired by the parish (*d*), and have heard it

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(*a*) See p. 33, *post*. *R. v. Netherthong*, 2 B. & A. 179. *R. v. Lordsmere*, 19 L. J. M. C. 215. *R. v. J.J. of St. Albans*, 22 L. J. M. C. 142. *Bussey v. Storey*, 4 B. & Ad. 98.

(*b*) *R. v. Mellor*, 1 B. & Ad. 36.

(*c*) See H. Act, 1878, s. 7, Part II. For the sake of brevity in this work the Highways and Locomotives (Amendment) Act, 1878, the 41 & 42 Vict. c. 77, is often referred to as the H. Act, 1878. See also 33 & 34 Vict. c. 73, s. 10.

(*d*) *R. v. Wandsworth*, 1 B. & A. 63. *Davies v. Stephens*, 7 C. & P. 570. *R. v. Leake*, 5 B. & Ad. 469.

## Chap. I.

spoken of as a highway by persons deceased before it became a subject of litigation (*e*), is generally resorted to, and is sufficient. "The absence of repair by the parish is a strong circumstance, in point of evidence, to prove that the road is not a public one—the fact of repair has a contrary effect; but the conduct of the parish in acquiescing or refusing its acquiescence is immaterial in every other point of view" (*f*). Nor is the fact that a road has been often repaired by the parish conclusive evidence of its being a public highway repairable by the parish, if there has been only a limited user of it (*g*).

Where proof is given that a road has been time out of mind used as a highway, and that the inhabitants of the township have always repaired their own highways, it is not necessary to show that they have ever repaired this particular road, in order to make them liable for its maintenance (*h*).

A much shorter period of user will suffice to establish a right in the public to a way than a right in a private person. Eight years (*i*), four or five years (*k*), and even three or four years (*l*), have under special circumstances been held sufficient to justify a presumption of dedication, and to be evidence of a public right of way.

The mere laying out of a road, though an accommo- <sup>Dedication of</sup>  
dation to the public, does not give them a right of <sup>highways.</sup>  
way (*m*). There must be an intention on the part of

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(*e*) *Austin's case*, Ventr. 189. *Barraclough v. Johnson*, 8 A. & E. 99. *Fowler v. Port*, 7 C. & P. 181. *R. v. Cottar*, 3 Camp. 444.

(*f*) Per Lord DENMAN, C. J., in *R. v. Leake*, 5 B. & Ad. 469.

(*g*) *R. v. Hawkhurst*, 27 J. P. 262.

(*h*) *R. v. Newbold*, 33 J. P. 114.

(*i*) *Trustees of Rugby Charity v. Merryweather*, 11 East. 375.

(*k*) *Jarvis v. Dean*, 3 Bingh. 447.

(*l*) *R. v. Hudson*, Str. 909.

(*m*) *R. v. Ward*, Cro. Car. 266.

Introd. the owner to dedicate it to their use (a); but an express formal dedication is not necessary. If the owner throw open a way, and marks by no visible distinction his wish to exclude the public, and suffers them to use it without interruption, an intention to dedicate will be presumed (b).

If, on the contrary, he places a bar or other obstruction across it, it is afterwards evidence to rebut the presumption of such dedication, though the bar may have been removed for some time (c).

But the fact of a gate being kept across a way is not conclusive that it is not a public way, as the way may have been granted to the public with a reservation of the right of keeping a gate across it, to prevent cattle straying (d).

After a road has been thrown open, the user by the public for a very few years will be sufficient to justify the presumption of a dedication, provided such user can be inferred to have existed with the consent of the owner in fee of the soil. The assent of a tenant for life is not sufficient (e), still less that of a mere lessee; and, therefore, where the tenants of houses in a street allowed it to be used as a public thoroughfare during a term of ninety-nine years, and the owner of the fee, at the expiration of the term, erected a fence across it, it was holden that he might do so, for no person could dedicate a way to the public except the owner of the

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(a) *Pools v. Huskisson*, 11 M. & W. 827.

(b) *R. v. Lloyd*, 1 Campb. 260. *Lade v. Shepherd*, 2 Str. 1004.

(c) *Roberts v. Karr*, 1 Campb. 262. *Lethbridge v. Winter*, Id. 263 (n).

(d) *Davies v. Stephens*, 7 C. & P. 570. *R. v. Bliss*, 1 Jurist, 960.

(e) *Brough v. Lord Scarsdale*, 29 J. P. 740.

fee (*f*). If, however, during the time it is so used by the public, there be a change of tenants, so that the owner of the fee had an opportunity of publicly indicating his dissent to its being so used, and did not: if it appear that he, or even his steward, knew of it, he will be deemed to have dedicated the way to the public; and where in such a case the way was uninterruptedly used for many years by the public, during which there were several changes of tenants, Lord ELLENBOROUGH said he should presume that the owner of the fee had notice (*g*).

Where land was vested in trustees for the purpose of a drainage, and the trustees dedicated part of it, consisting of a bank thrown up alongside one of the drains, as a way, to the public, who used it uninterruptedly for 25 years: it was holden that as it appeared that the user of the way by the public was not incompatible with the purposes of the drainage, the dedication was valid, and the parish was bound to repair the road (*h*). Where, however, a road used for carriages led through several farms to the lodge of a park, through which there was a private bridle road leading to public places, and all persons who thought fit used the carriage road as far as the lodge, (to see whether they might be admitted to enter, and cross the park,) and were often turned back at the pleasure of the proprietor,—it was held, on an indictment by the pro-

(*f*) *Wood v. Veal*, 5 B. & Ald. 454; and see *Harper v. Charlesworth*, 4 B. & C. 591. *Winterbottom v. Earl of Derby*, 36 L. J. Ex. 194; L. R. 3 Ex. 316.

(*g*) *R. v. Barr*, 4 Camp. 16. See *Powers v. Rathurst*, 49 L. J. Ch. 294, as to presuming the consent of the lord to a way over copyholds.

(*h*) *R. v. Leake*, 5 B. & Ad. 469.



Introd. prior against the parish for non-repair of the road, that though it had been often repaired by the parish, there was no evidence of a dedication to the public, so as to throw the burthen of repair upon the parish, there having been only a limited user (a).

As there cannot be a temporary dedication of a way to the public, so there can be no dedication to a limited portion of the public, as to the inhabitants of a particular parish. A parish may possess, as private property, a right of way over land, in the same manner as they may possess a field, but it must be by grant from the owner of it, and if such a right was conferred upon the parishioners, a dedication to the public would not be presumed without cogent evidence.

A dedication to the parish by the owner of the soil cannot be presumed; a dedication by user can be presumed in favour of the general public only; not in favour of a particular parish (b).

A dedication to the public may, however, be for some purposes limited: *e.g.*, a right of footway only may be granted, the use of the road as a carriage way being reserved to the owner of the soil (c). It may be dedicated subject to an obstruction, such as a door step, or an area flap, which if newly erected would be a nuisance (d), or subject to a pre-existing right of user by the occupiers of adjoining land for purposes other

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(a) *R. v. Hawkhurst*, 27 J. P. 262.

(b) *Vestry of Bermondsey v. Brown*, 30 J. P. 118. *Poole v. Huskisson*, 11 M. & W. 827. *Hildreth v. Adamson*, 25 J. P. 645.

(c) *Roberts v. Karr*, 1 Camp. 262.

(d) *Fisher v. Prowse*, 31 L. J. Q. B. 212; 2 B. & S. 770. *Cooper v. Walker*, Id. *Gerring v. Barfield*, 16 C. B. (N. S.) 597; 28 J. P. 615. *Hamilton v. Vestry of St. George's, Hanover Square*, 43 L. J. M. C. 41. *Vestry of St. Mary's, Newington v. Jacobs*, 41 L. J. M. C. 72; L. R. 7 Q. B. 47.

than that of a highway, *e. g.*, of depositing goods thereon (e). Chap. I

The dedication may be also subject to a partial and occasional interference with the use of the highway, during the continuance of a fair, for a certain and reasonable time (f).

A footway across an arable field had from time immemorial at all times of the year been used by all persons, as of right, but the occupier of the field and his predecessors had also from time immemorial, in ploughing the field, ploughed up the footway in such parts as they thought fit, and in other parts lifted the plough across it. Held by the Court of Exchequer Chamber, upholding the decision in *Mercer v. Woodgate*, 39 L. J. M. C. 21, that the surveyors of the parish highways were not justified in repairing the way with hard materials, so as to prevent it from being ploughed, or the plough from being lifted over it, so easily as before, as it must be presumed to have been dedicated to the public, subject to the inconvenience of being occasionally ploughed up (g).

Whether there can be any partial dedication of a carriage way for particular user only, as, for instance, for all purposes, except the carrying of coals or the like, is matter of doubt. BAYLEY, J., and HOLROYD, J., thought there might be such a limited dedication. LITTLEDALE, J., did not concur (h).

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(e) *Le Neve v. Mile End Old Town*, 8 E. & B. 1054. *Vestry of St. Mary's, Newington v. Jacobs*, 41 L. J. M. C. 72.

(f) *Elwood v. Bullock*, 6 Q. B. 411. *Simpson v. Wells*, 41 L. J. M. C. 105.

(g) *Arnold v. Blaker*, 40 L. J. Q. B. 185; L. R. 8 Q. B. 96. See *Lawrence v. Hitch*, 37 L. J. Q. B. 202.

(h) *M. of Stafford v. Coyney*, 7 B. & C. 257.

**Introd.**

In all cases, however, the dedication, whatever may be the nature of it, must be an absolute one. There can be no reservation on the part of the owner of a power of afterwards restricting it, or of interfering with the use of it by the public, as, for instance, of laying across it a tramroad sunk into the road, and having the highest part level with the surface of it (a).

As to acquiescence by the public: where a road was freely used before the passing of the H. Act, 1835, under such circumstances as to justify a presumption that it was dedicated by the owner, no acquiescence on the part of the public, testified by repairing or otherwise, is necessary, in order to constitute it a highway repairable by the parish (b). In the case of a road dedicated since that time a formal acquiescence, in the manner directed by statute, is necessary in order to create such liability (c).

As to an urban sanitary authority agreeing to a new public road, repairable by the public, being made, see Public Health Act, 1875, s. 146, Part VIII.; and as to the power of such an authority to declare certain streets to be highways, see sect. 152 of that Act, Part VIII.

**Ownership  
of the way.**

By dedicating a way to the public, the owner of the land over which it passes does not thereby relinquish his property in the land occupied by it, but the right still remains vested in him; he is entitled to the subsoil (d) absolutely, and to the surface soil, subject only

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(a) *Reg. v. Charlesworth*, 16 Q. B. 1012.

(b) See *R. v. Inhab. of Bradfield*, 43 L. J. M. C. 155.

(c) H. Act, 1835, s. 23. *R. v. Leake*, 5 B. & Ad. 469, overruling *R. v. St. Benedict*, 4 B. & A. 447; see also *R. v. Horley*, 27 J. P. 101.

(d) To whom minerals under disturnpiked roads belong, see

to the user of it by the public. This position was severely tested in *R. v. Pratt*, 24 L. J. M. C. 113, in which it was held, that if a person stand on a highway (the land on both sides of which belongs to B.) and by sending his dog into a covert adjoining, puts up a pheasant, which he shoots as it flies across the road, he is guilty of trespassing on the land of B. (viz., the highway) in pursuit of game; because he is upon the highway, not merely in the exercise of his right of easement as travelling upon it, but for another and a different purpose. Where a highway is immemorial, so that positive proof cannot be given of the dedication of it by any owner, if the land on both sides be freehold, and belong to one person, he is presumed to be owner of the land on which the road passes, and, so far as it can be exercised without inconvenience to persons using the road, entitled to the right of pasturage on the side of it (*e*). But if the land on each side belong to different persons, the presumption is that the proprietors of such land respectively are owners of the soil, *usque ad medium filum viæ* (*f*); and each of course is deemed the owner of the patches of land (if any) which are between the hedge on his side and the beaten road. But if the land on each side be copyhold, and the road an immemorial way, then, although the patches of land on either side

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H. Act, 1878, s. 27. As to highways in an urban sanitary district being vested in the urban sanitary authority, see Public Health Act, 1875, s. 149, Part VIII.

(*e*) See p. 61, *post*, and *Morris v. Jeffries*, L. R. 1 Q. B. 261; 35 L. J. M. C. 143. *Lawrence v. King*, L. R. 3 Q. B. 345; 37 L. J. M. C. 78; note to sect. 25, H. Act, 1864. See H. Act, 1864, s. 25, a provision as to cattle found straying, &c., on highways.

(*f*) *Cook v. Green*, 11 Price, 736. *Heaulam v. Hedley*, Holt, N. P. C. 463. See *White v. Hill*, 14 L. J. 79, Q. B. *Berridge v. Ward*, 10 C. B. (N.S.) 400. *Leigh v. Jack*, 49 L. J. Ex. D. 220.

Introd. are presumed to belong to the copyhold tenement on that side (a), yet the ownership of the soil of the road is presumed to be in the lord of the manor. All this, however, must be deemed to be presumption, which, of course, may be rebutted by evidence of the actual ownership, or of the exercise of continued acts of ownership over the soil by some other person, to the knowledge and with the tacit consent of the party having such presumed right; and it is not to be assumed that because the right to the soil may be in the owner of the adjacent land, or any other person, he is therefore at liberty to inclose the patches at the side which are not ordinarily repaired, or used by the public as a road. Any such inclosure must now be considered of questionable legality. "If it were once held," said Lord TENTERDEN, C. J., "that only the middle part, which carriages ordinarily run upon, was the road, you might by degrees inclose up to it, so that there would not be room left for two carriages to pass. The space at the sides is also necessary to afford the benefit of air and sun. If trees and hedges might be brought close up to the part actually used as the road, it could not be kept sound" (b).

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(a) *Doe v. Pearsey*, 7 Barn. & C. 204. *Steel v. Prickett*, 2 Stark. 463.

(b) *R. v. Wright*, 3 B. & Ad. 681; see *R. v. Train*, 31 L. J. M. C. 169, p. 49.

## CHAPTER II.

## Chap. II.

### OFFICERS, BOARDS, &c., FOR THE MAINTENANCE AND MANAGEMENT OF THE HIGHWAYS.

*Parish surveyors*, p. 13.

*Parish boards under H. Act*, 1835, p. 15.

*District surveyor for union of parishes formed under H. Act*,  
1835, p. 16.

*Council of a borough*, p. 16.

*Highway boards under H. Acts*, 1862, 1864, 1878, p. 17.

*Election of waywardens*, p. 20.

*Consequence of formation of districts*, p. 21.

*Appointment and duties of officers*, p. 21.

*Works and duties of the board*, p. 22.

*Expenses of board*, p. 22.

*Accounts of*, p. 22.

*Appeal*, p. 24.

*Other provisions as to*, p. 25.

*Urban sanitary authorities under Public Health Act*, 1875,  
p. 26.

*Rural sanitary authorities*, p. 26.

*County boards in South Wales*, p. 26.

IN parishes, townships, &c., not within a borough, or <sup>Parish</sup> under a local Act, and in which no steps have been <sup>surveyors.</sup> taken to vest the management of the highways in any other person or body, one or more persons to serve the office of surveyor are to be elected at the first meeting in vestry, for the nomination of overseers of the poor in every year, *i.e.*, on the 25th March, or within 14 days afterwards (c); or, if no meeting be holden for the nomination of overseers (*i.e.*, in those places which do not separately maintain their own poor, but do (d))

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(c) 54 Geo. 3, c. 91, s. 1. *R. v. Sneyd*, 5 Jur. 962.

(d) A surveyor of highways may now be appointed for a parish which does not maintain any highway. H. Act, 1878, s. 25.

Introd. maintain their own highways), then at a public meeting of the inhabitants occupying property liable to be assessed to the highway rate, to be holden within the same period (a).

The surveyor must be resident in the parish or the parish adjoining, and duly qualified in respect of property or occupation (b). His election may be questioned on *quo warranto* (c). If elected, and not exempt by law from serving the office, he is liable to a penalty of £20 for refusing to act. He may, however, appoint a deputy. If no surveyor be elected, or if a surveyor elected neglect or refuse to act, the justices at the next special sessions, may appoint one (d). The duties of the surveyor are to repair and keep in repair the several highways in the parish for which he is appointed, and which are now, or hereafter may become, liable to be repaired by the said parish (e).

In order to raise money for this purpose he is authorized to levy a rate as mentioned, *post*, p. 43.

He is to fix direction posts, place graduated stones or posts where the road is subject to floods, secure causeways (f), remove snow, or soil fallen down from the banks (g), keep accounts (h).

(a) H. Act, 1835, s. 6. *R. v. Kershaw*, 26 L. J. M. C. 19. Surveyors are not to be appointed when rural sanitary authority exercises the powers of a highway board under sect. 4 of H. Act. 1878.

(b) H. Act, 1835, s. 7.

(c) *R. v. Dix*, 30 J. P. 390.

(d) H. Act, 1835, s. 11.

(e) H. Act, 1835, s. 7.

(f) *Id.* s. 24.

(g) *Id.* s. 26.

(h) H. Act, 1835, ss. 39, 40. The accounts of a highway parish are now made up, and audited by the poor law auditor, as directed by the H. Act, 1878, s. 9. See Part X. orders made by Local Government Board as to accounts; and see 42 Vict. c. 6, ss. 3—8, noticed Part VII. The above provisions, however, in the H. Act,

For any neglect of duty he is liable to penalties (i) Chap. II.  
 but he is not personally liable in an action for injuries sustained in consequence of the foundrous state of a highway (k). If, however, he is guilty of any personal negligence, such as allowing a heap of gravel to remain on a highway, after notice to remove it, and an accident occurs in consequence of such negligence, he is liable in an action for the injury sustained (l). He is also liable to a penalty under H. Act, 1835, s. 56.

He may, instead of serving the office himself, appoint a deputy to be approved by the justices (m): and the inhabitants, if they think fit, may instead of imposing the office upon an inhabitant qualified by estate, elect any person of skill and experience, with a salary, to discharge the duties (n).

In large parishes, where the population at the last Parish boards. census exceeds 5,000, the vestry, at a meeting to be holden for the purpose, may by a majority of two-thirds of those present (subject to the right of demand-

1835, relating to surveyors accounts, do not apply to parishes comprehended in a highway district (H. Act, 1862, s. 42).

(i) H. Act, 1835, s. 20.

(k) *Mackinnon v. Penson*, 8 Ex. 819; 9 Ex. 609. *Young v. Davies*, 7 H. & N. 760. *Gibson v. Preston, Mayor of*, 39 L. J. Q. B. 131. The defendant had been appointed by the vestry surveyor of highways. The vestry resolved that a part of a highway should be raised, and ordered the defendant to employ men to do it. He contracted with G. to do the work at so much per yard, and the vestry found the materials. G. employed his own men, and proceeded to perform the work. The defendant did not personally interfere with the work. G. left the road in such a state that the plaintiff in driving along by night was overturned and injured. The defendant did not give any direction that the road should be left in such a state. *Held* (in an action by the plaintiff), that the defendant was not liable. *Taylor v. Greenhalgh*, 43 L. J. Q. B. 168; L. R. 9 Q. B. 487. *Pendlebury v. Greenhalgh*, L. R. 1 Q. B. D. 36.

(l) *Davis v. Curling*, 15 L. J. 56, Q. B. *Gray v. Pullen*, 29 J. P. 69. *Foreman v. Canterbury, Mayor of*, L. R. 6, Q. B. 214.

(m) H. Act, 1835, s. 7.

(n) *Id.* s. 9.



**Introd.** ing a poll) (a) elect any number of persons, not exceeding 20 nor less than 5, being resident householders and assessed to the poor rate, to serve the office of surveyors of the highways for the year ensuing, and they or any three of them may act as a board, to be called "The Board for the Repair of the Highways in the Parish of —." They may appoint a collector or collectors of the highway rates, a treasurer, a clerk, and an assistant surveyor: the two last officers with a salary (b). They may also determine and direct how and in what manner the highways shall be curbed or paved, with stone or otherwise (c).

District  
surveyors for  
unions of  
parishes  
formed under  
H. Act, 1835,  
ss. 13, &c.

Under the H. Act, 1835, ss. 13, &c., any number of parishes are enabled to unite in the formation of a *district* "for the purpose of having one sufficient person as surveyor, who shall have the superintendence and management of the funds to be raised and levied under the provisions of the Act in each parish forming part of such district."

This power still exists in parishes which have not been comprehended in a district formed under the provisions of the H. Act, 1862, &c. (see s. 42, sub-sect. 4 of that Act), and which are not within a highway area governed by an urban or rural sanitary authority.

Council of  
a borough.

By the H. Act, 1862, s. 45, reciting that in certain boroughs there are roads, which have hitherto been repaired by the inhabitants of the parishes, &c., such inhabitants being also liable to the general rates for the repair of the public streets, &c., which are maintained by the council, by reason whereof a great burden is

(a) *R. v. How*, 27 J. P. 773 ; 33 L. J. M. C. 53.

(b) H. Act, 1835, s. 18. This section does not apply to any district formed under H. Act, 1862. See s. 42, sub-s. 4, of that Act.

(c) H. Act, 1835, s. 19.

imposed upon the ratepayers of such parishes, &c., it is enacted that on the petition of the majority of ratepayers present at a public meeting, the council may adopt such parish roads, &c., and apply to their maintenance and repair the rates levied by the council for the repair of the public streets, &c., within the borough.

Chap. II.

Any five or more justices of a county may, in the manner directed by the Acts, bring before the court of quarter sessions a proposal for dividing the county or some part thereof into highway districts, or constituting the whole or some part thereof a highway district (*d*). If it is proposed that only part of a county shall be formed into a district, not less than two out of the five justices must be resident in the said district (*e*), or acting in the petty sessional division in which the district or some part of it is situate (*f*).

Highway  
boards under  
H. Acts, 1862,  
1864, 1878.

If the proposal is approved by the sessions, a provisional order may be made in accordance with it, which, to acquire validity, will require confirmation at some subsequent sessions (*g*).

Any district so formed may be afterwards altered by the addition or subtraction of parishes, or districts may be combined or dissolved (*h*).

There are, however, certain restrictions on the formation of districts under the Act (*i*), viz. :—

There shall not be included in a district any of the following places :—

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(*d*) Highway districts are to be made as far as possible coincident in area with rural sanitary districts, H. Act, 1878, s. 3.

(*e*) H. Act, 1862, s. 5.

(*f*) H. Act, 1864, s. 6.

(*g*) H. Act, 1862, s. 5—to be held within a period of not more than 6 months, H. Act, 1864, s. 6.

(*h*) H. Act, 1862, s. 39, H. Act, 1864, ss. 14, 15.

(*i*) H. Act, 1862, s. 7.

**Introd.**

1. Any part of a county to which the Act 23 & 24 Vict. c. 68 (South Wales Highways Act) extends (see Part XI.) ;

The Isle of Wight ;

Any district constituted under the Public Health Act, 1848, and the Local Government Act, 1858, or either of them (see Part III.) ;

Any parish in which there is a board formed under H. Act, 1835, s. 18, unless with the consent of such board ;

Any parish, &c., within the limits of the metropolis, as defined by statute 18 & 19 Vict. c. 120 ;

Any parish, &c., the highways of which are maintained under any local Act.

(The above restrictions are somewhat modified by the H. Act, 1864, and the justices are now empowered to declare that any poor law parish, or residue of a parish, after excluding such part as is above prohibited, shall be a highway parish. Sect. 7.)

2. There shall not be included in any district any parish or place within a borough, without the consent of the council of the borough and the vestry of the parish.

(Where a parish or place separately maintaining its own highways is situate partly within and partly without a borough, the outlying part may be included in a highway district. H. Act, 1864, s. 8.)

3. Where a parish is situate in more than one county, the whole of the parish shall be deemed to be within the county in which the church or (if there be no church) the greater part of the parish is situate.

(In order to combine contiguous places situate in different counties, or places situate partly in one county

and partly in another, provisional and final orders by the justices in both counties are necessary. H. Act, 1864, s. 13.) Chap. II.

4. Where a parish separately maintaining its own poor is divided into townships, &c., each separately maintaining its own highways, the justices may, if they think fit, combine all the townships, &c., and declare that no separate waywardens shall be thenceforth elected for them, but that one or more shall be elected for the parish as a whole.

(They may also combine any two or more of such townships, &c., and any combination so formed shall be deemed a highway parish. H. Act, 1864, s. 7.)

In each district there is a highway board, consisting of the waywardens elected for the several parishes and the county justices residing either within the district (a) or within a borough or other place excepted in section 7, which is surrounded by or adjoins the district (b). The board is a body corporate, having a perpetual succession and a common seal, and has power to acquire and hold lands without license in mortmain (c).

The board for all the purposes of the H. Act, 1835, except that of levying highway rates, is deemed to be the successor in office of the surveyor of every parish within the district. (H. Act, 1862, s. 11.)

The proceedings of the board are to be conducted according to such regulations as they shall think fit to make, subject to certain rules or conditions contained in a schedule annexed to the H. Act, 1864: see sect. 27.

By H. Act, 1878, s. 4, where a highway district

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(a) H. Act, 1862, s. 9.

(b) H. Act, 1864, s. 29.

(c) H. Act, 1862, s. 9.

**Introd.** becomes coincident in area with a rural sanitary district an order may be obtained that the rural sanitary authority may exercise the powers of the highway board.

**Election of  
waywardens  
under H. Act,  
1862, &c. (a).**

In every parish forming part of a district, there shall be every year elected one or more waywardens, as the order of sessions shall direct, in the same manner and at the same time as parish surveyors would have been elected if the Act had not passed (*b*), i. e., on 25th March, or within 14 days after (*c*).

The justices may, however, for the purpose of avoiding delay in bringing the Act into operation, appoint by their final order a day on which the first election of waywardens, as members of the board, is to take place; such waywardens to continue in office only until the time at which the next annual election of surveyors would have taken place (*d*).

A waywarden before taking his seat at the highway board must produce a certain certificate of his appointment. (H. Act, 1864, s. 19.)

A waywarden may sit for more places than one, but he is entitled to one vote only as waywarden (*b*).

By 26 & 27 Vict. c. 61, a penalty of £10 is imposed upon any waywarden contracting for the repair of any road, or execution of any work, in his own parish or any parish in the same district (*e*). He may, however,

(*a*) If an order be made that a rural sanitary authority shall exercise all the powers of a highway board under sect. 4 of H. Act, 1878, waywardens are not to be elected for any parish in the district.

(*b*) H. Act, 1862, s. 10. Where there is a combination of townships, &c., where poor law parish declared highway parish, and where no surveyors in parish before order forming highway district, see H. Act, 1864, s. 7: where a parish is partly within and partly without a borough, see sect. 8 of that Act.

(*c*) H. Act, 1835, s. 6.

(*d*) H. Act, 1864, s. 11.

(*e*) H. Act, 1862, s. 1.

contract, under the licence of justices, for the supply and cartage of materials within his own parish (f). Chap. II.

Waywardens continue in office till the 30th day of April in the year following the year in which they were elected, and on that day their successors come into office (g). Waywardens required to levy rates under H. Act, 1862, &c., may, with the consent of ratepayers, appoint a paid collector of highway rates (h).

At and after the first meeting of the board, all property, and all right and powers vested in the surveyor of any parish forming part of the district (except the power of making highway rates), shall pass to and vest in the highway board, against whom also all debts and liabilities of the surveyor may be enforced. Consequence of formation of highway district under H. Act, 1862.

Property transferred to the board is held in trust for the several parishes within the district.

The outgoing surveyor continues in office until 7 days after the appointment of the district surveyor, and may collect the outstanding rate, even after the 7 days (i).

At the first meeting of the board they shall appoint a treasurer, clerk, and district surveyor (k). They may also appoint an assistant surveyor, if they think fit, and pay such salaries as they deem reasonable (l). Appointment and duties of officers under H. Act, 1862, &c.

(f) H. Act, 1864, s. 20.

(g) H. Act, 1862, s. 10. As to waywardens for a parish not holding office after order that rural sanitary authority shall exercise the powers of highway board, see H. Act, 1878, s. 4.

(h) H. Act, 1864, s. 31.

(i) H. Act, 1862, ss. 11, 43. *R. v. Bluffield*, 29 J. P. 245; 11 L. T. (N.S.) 337.

(k) Boards may unite in appointing a district surveyor, H. Act, 1878, s. 6. The appointment of any officer of a highway board may be made by a minute of the board signed by the chairman, and countersigned by the clerk of the board, H. Act, 1864, s. 30.

(l) H. Act, 1862, s. 12. As to mode of proceeding in default of appointment, see H. Act, 1864, s. 45.

Introd.

The duties of the several officers are defined, and no two offices are to be filled by the same person (*a*).

As to officers accounting, see H. Act, 1862, s. 31.

Works and  
duties of  
the board  
under H. Act,  
1862, &c.

The highway board shall maintain in good repair the highways within their district, and, as respects the highways in each parish, perform the same duties, have the same powers, and be liable to the same legal proceedings as the surveyor of such parish would have performed, had, and been liable to if the Act had not passed (*b*).

They may contract to repair highways for the repair of which other parties are liable (*c*). They may make improvements, widen roads, make new roads, build and enlarge bridges, &c., and may borrow money for the purpose (*d*), and purchase lands (*e*).

They may contract for materials, &c, required for repairing highways within their district for any period not exceeding three years. (H. Act, 1864, s. 52.)

The proceedings to be taken when roads are out of repair will be specified hereafter (see Chap. 6).

How money is to be raised to meet expenses of boards under H. Act, 1862, &c., see *post*, Chap. 5.

Accounts of  
highway board  
under H. Act,  
1862, &c.

The accounts of every highway board are to be made up and balanced to 25th March in each year, and as soon as conveniently may be after such day the accounts are to be audited and examined by a poor law auditor. The auditor is paid by the highway authority (*f*).

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(*a*) H. Act, 1862, ss. 13, 14, 15, 16.

(*b*) H. Act, 1862, s. 17.

(*c*) H. Act, 1864, s. 22.

(*d*) Id. ss. 47, 48.

(*e*) H. Act, 1864, s. 53.

(*f*) H. Act, 1878, s. 9. As to audit of accounts of rural sanitary authority, see 38 & 39 Vict. c. 55, s. 248. As to audit of accounts of maintenance of main roads, see H. Act, 1878, s. 18.

Within thirty days after the completion of the audit a statement is to be published, showing the receipt and expenditure in respect of each parish, and of the district fund, and sent to each member of the board, and to the overseers of each parish in the district; and a copy is to be furnished to any ratepayer on payment of a sum not exceeding one penny (*g*). As to returns to be made of rates, receipts, and expenditure as regards highways, see 42 & 43 Vict. c. 39, Part VII.

The following is an extract from a letter from the President of the Local Government Board, dated 21st September, 1878, to the clerks of highway boards :

“ In future the accounts of the highway board must be balanced to the 25th of March in each year, and will be subject to the same audit in every respect as the accounts of boards of guardians.

“ The remuneration received by the auditor will be such as the Local Government Board direct, and will be paid, together with the expenses incident to the audit, by the highway board out of the district fund. It should be added that the accounts of the highway board must hereafter be made up in a form to be prescribed by the Local Government Board, and the Board will, as early as practicable, issue an order prescribing such form (see Part X.).

“ So much of sect. 36 of the H. Act, 1864, as is inconsistent with these provisions has been repealed, and the statement of the receipts and expenditure of the highway board, which has hitherto been required to be sent to every member of the highway board and to the overseers of every highway parish in the district having overseers, within 30 days after the signature of the

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(*g*) H. Act, 1864, s. 36; H. Act, 1878, s. 9.



Introd. accounts by the chairman, must for the future be so sent within 30 days after the completion of the audit.

"It will be obligatory on the highway board to keep, in such form as may be directed by the county authority, a separate account of the expenses of the maintenance of the main roads within their district; and to forward copies of such account to the county authority at such time or times in the year as may be required by that authority. The accounts so kept must be audited in the same manner as the other accounts of the highway board.

"Special attention should be paid to the requirements of the Act relating to these separate accounts; for if default is made in complying with them or with any directions given in pursuance of them by the county authority, that authority may withhold all or any part of the contribution payable by them under the Act towards the maintenance of main roads by the highway board for the year in which such default occurs" (see H. Act, 1878, s. 18).

Appeal under  
H. Acts, 1862,  
&c.

Any person feeling aggrieved by any rate levied upon him on the ground of incorrectness in the valuation, or of any person being put on or left out of a rate, or inequality or unfairness, may appeal to justices in special sessions (a).

An appeal to quarter sessions is given to any waywarden or ratepayer who feels aggrieved in respect of any order of the board for the repair of a highway on the ground that it is not legally repairable by the parish, or in respect of any order on the ground that it was made without jurisdiction; or that any item of expense has not in fact been incurred, or incurred

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(a) H. Act, 1864, s. 37. As to justices' jurisdiction at petty sessions, see sect. 46.

without authority; or in respect of any item of expenditure as being unauthorised; or in respect of the contribution required to be made by any parish as not being according to the proportion required by the Act (*b*). Conditions are attached to the right of appeal (*c*), and a provision is made for reference to arbitration (*d*). A jury may be impannelled to try questions of fact (*e*), and provision is made for payment of costs (*f*). Chap. II.

See further as to appeals, Chap. 10.

There are several supplemental provisions with respect to highways in extra-parochial places (*g*) and outlying parts of parishes (*h*); repairs of highways where an individual or corporation is liable *ratione tenuræ* (*i*); the conversion of private into public roads (*k*); the relative duties of outgoing surveyors and highway boards (*l*); the widening, diverting, and stopping up of highways (*m*); the adoption of certain highways by the councils of boroughs (*n*); permission to landowners to inclose highways, with consent of board, without becoming liable to repair *ratione clausuræ* (*o*); and the recovery of penalties (*p*); all of which will be found introduced in their respective places. Other provisions in H. Acts, 1862, 1864, 1878.

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- (*b*) H. Act, 1864, s. 38.
  - (*c*) H. Act, 1864, s. 39.
  - (*d*) Id. s. 40.
  - (*e*) Id. s. 42.
  - (*f*) Id. s. 43.
  - (*g*) H. Act, 1862, s. 32; H. Act, 1864, s. 9.
  - (*h*) H. Act, 1862, s. 33.
  - (*i*) Id. ss. 34, 35; H. Act, 1864, ss. 23, 24.
  - (*k*) H. Act, 1862, s. 36.
  - (*l*) Id. s. 43; H. Act, 1864, s. 28.
  - (*m*) H. Act, 1862, s. 44.
  - (*n*) H. Act, 1862, s. 45.
  - (*o*) Id. s. 46.
  - (*p*) Id. s. 47.

**Introd.**

It is also enacted that the H. Act, 1862, shall be construed as one with the H. Act, 1835, so far as is consistent with the provisions of the former Act (a). The H. Act, 1864, so far as is consistent with the tenor thereof, is to be construed as one with the H. Act, 1862. If any highway board make default in holding its first meeting in pursuance of the Act, the justices may grant relief (b).

**Urban sanitary authorities.**

Urban sanitary authorities are established under the Public Health Act, 1875, noticed in Part III. These authorities have within their districts all the powers, liabilities, &c., of surveyors of highways (sects. 144—160 of above Act). The highways within their district are vested in them, and they are to repair same, &c.; and they are highway authorities within the meaning of the H. Act, 1878. Urban sanitary districts are defined by the Public Health Act, 1875, s. 5; and see H. Act, 1878, s. 38. The districts are highway areas for the purposes of the H. Act, 1878.

**Rural sanitary authorities.**

Rural sanitary authorities are established under the Public Health Act, 1875, referred to in Part III. As to their exercising the powers of highway boards, see H. Act, 1878, ss. 3—5, noticed in Part II.

**County boards in South Wales.**

The Acts as to county boards in South Wales are 23 & 24 Vict. c. 68, and 41 & 42 Vict. c. 34; they will be found in Part XI.

By the H. Act, 1862, it is provided that no part of any county to which the 23 & 24 Vict. c. 68, extends shall be included in any highway district.

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(a) H. Act, 1862, s. 42.

(b) Id. s. 40; H. Act, 1864, s. 10.

## CHAPTER III.

## Chap. III.

### LIABILITY FOR REPAIRS OF HIGHWAYS.

*Liability of parish to repair, p. 27.*

*Liability of townships, p. 29.*

*Liability of individuals or corporations by prescription and  
ratione tenuræ, p. 30.*

*Liability to repair ratione clausuræ, p. 31.*

*Liability where the road is in two parishes, p. 32.*

*Liability as to turnpike roads, p. 33.*

*Liability as to footpaths, stiles, &c., p. 34.*

*Liability as to roads made under Inclosure Acts, p. 35.*

*Liability as to bridges and the roads over them, p. 36.*

*Liability of county to contribute to repair of roads called  
"main roads," p. 39.*

*Liability of highway boards, urban and rural sanitary autho-  
rities, &c., p. 39.*

THE inhabitants of the parish at large are *primâ facie*, <sup>Liability of parish to repair.</sup> and of common right, bound to repair all highways lying within it, unless by prescription, or otherwise, they can throw the burden upon particular persons (c).

But a road first dedicated to and used by the public since the passing of the H. Act, 1835, though it may become a highway by such dedication and user, does not therefore become repairable by the parish, unless it be of public utility, and made in a substantial manner, and to the satisfaction of the surveyor of the parish, and of two justices, who are to give a certificate to that effect (d). If it be in a highway district under H. Act, 1862, it must be made to the satisfaction of the

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(c) 1 Hawk. P. C. Chap. 76, ss. 5—8.

(d) H. Act, 1835, s. 23.

**Introd.** highway board (a); if in a district under the Public Health Act, 1875, see Public Health Act, 1875, *post*, Part III. (b).

This general liability of the occupiers of land in a parish to repair all highways within it cannot be shifted from them by any act of their own (c), though by prescription, or statute, it may be thrown on individuals, or a township, or other part of the parish.

And where a township, liable to repair a way by prescription, was relieved of its liability by Act of Parliament, it was held that the liability thereby necessarily fell upon the parish at large (d).

A parish, however, is only liable to keep its existing roads in repair: and it is not bound to reinstate a road which has been destroyed. Therefore, where a highway ran down to the sea, at right angles to the shore, the land gently sloping to the water's edge, but at the end next the sea a portion of it was swept away by the encroachment of the waves, so that there was left a cliff rising 20 feet high above the beach, and there terminating abruptly,—it was held that as the substance of the road was gone beyond the edge of the cliff, there was no road beyond that point which the parish could be called upon to repair, and that they were not bound to provide any means of communication between the cliff and the sea (e). And where a highway lay on the top of a sea wall, which was washed away by the sea, it was held that upon an indictment for non-repair of

(a) H. Act, 1862, ss. 11, 42.

(b) *R. v. Dukenfield*, 32 L. J. M. C. 230.

(c) *R. v. Mayor, &c., of Liverpool*, 3 East, 86.

(d) *R. v. Sheffield*, 2 T. R. 106. *R. v. St. George, Hanover Square*, 3 Camp. 222. *Anon.* Lord Raym. 725.

(e) *R. v. Hornsea*, 23 L. J. M. C. 59. See *R. v. Justices of Greenhow*, 45 L. J. M. C. 141, where it was held there was no such total destruction of the road as would relieve the parish from liability to repair.

the highway, the parish could not be convicted for not rebuilding the wall (*f*). Chap. III.

Neither is a parish bound to widen a road, or to clean it from mud (*g*), or, in places dangerous from precipices, to put fences where none have previously existed (*h*), or to do repairs where, from the nature of things, they must be ineffectual, as where a road is not passable at high water, and is usually a soft sludge at ebb (*i*). Where, in a highway district, a road is considered unnecessary for public use, the board may, on application to justices, obtain an order that it shall not thenceforth be repairable by the parish; if, however, the road should thereafter become necessary, the liability to repair may be revived (*k*).

Upon what terms a highway repairable *ratione tenuræ* may be converted into a parish road, see H. A., 1835, s. 62, and H. Act, 1862, s. 35.

If a parish be divided into townships or other districts, and each such township or district have immemorially maintained all the roads within it, it is then bound to repair, in the same manner as a parish. And evidence of the custom will be conclusive of its liability, without showing any consideration for it, or proving that the particular road has ever been repaired by the township (*l*). And where in such a case the inhabitants of the parish were indicted for not repairing a way, it was holden that they might plead an immemorial

Liability of township to repair.

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(*f*) *R. v. Paul*, 2 M. & R. 307.  
 (*g*) *R. v. Stretford*, 2 Ld. Raym. 1169.  
 (*h*) *R. v. Whitney*, 7 C. & P. 208.  
 (*i*) *R. v. Lanulph*, 1 M. & R. 393.  
 (*k*) H. Act, 1864, s. 21.  
 (*l*) *R. v. Ecclesfield*, 1 B. & A. 348; and see *R. v. King's Newton*, 1 B. & Ad. 826. *R. v. Bishop Auckland*, 1 Ad. & El. 744. *R. v. Scarsbrick*, 6 Ad. & El. 509. *R. v. Newbold*, 33 J. P. 114. *R. v. Ardsley*, 47 L. J. M. C. 65.

Introd.

custom for each of the townships separately to repair the highways within it, even although there was but one road within one of the townships, and that a newly-made road (*a*). But the immemorial custom must be proved; otherwise the parish, not the township, &c., will be deemed liable (*b*). Where it was proved that a tithing, consisting of two farms only, had never been rated to the highway rate of the parish at large, though rated to the poor rate, and that the occupiers for the time being of the two farms had always done what repairs were necessary, though of little amount, to the roads in the tithing without assistance from the rest of the parish, it was held that this constituted a sufficient legal exemption of the tithing from the *prima facie* liability to the highway rate (*c*).

*Semble*, that in point of law a parish cannot be liable by prescription to repair a highway situate in another parish (*d*). At all events, a consideration for doing the repairs must be shown.

If an extra-parochial hamlet be indicted for not repairing a way within it, the indictment must allege that the inhabitants had immemorially repaired the way (*e*).

Liability of  
individuals or  
corporations  
to repair by  
prescription  
and *ratione*  
*tenuræ*.

Corporations, spiritual or temporal, having perpetual succession, may be liable by prescription to repair a highway; and that they have always within living memory done so will be good evidence of this pre-

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(*a*) *R. v. Barnoldswick*, 4 Q. B. 499.

(*b*) *It. v. Kingsmoor*, 2 B. & C. 190; and see *R. v. Penderryn*, 2 T. R. 513.

(*c*) *Freeman v. Read*, 32 L. J. M. C. 226. *R. v. Rollitt*, L. R. 10, Q. B. 475.

(*d*) *R. v. Ashby Folville*, 35 L. J. M. C. 154.

(*e*) *R. v. Kingsmoor*, 2 B. & C. 190. *R. v. Penderryn*, 2 T. R. 513; see H. Act, 1862, s. 32; H. Act, 1864, s. 9.

scriptive liability, without showing any consideration Chap. III.  
for it (*f*).

To prove an individual liable, it is necessary to show a consideration for his liability (*g*). The usual consideration shown for the liability, is by reason of the party's tenure of certain land; and if it be proved that he, and all those who held the same lands before him, have always repaired the way in question, that will be good evidence of the liability (*h*). But where the sea swept away the road, which a man was bound *ratione tenuræ* to repair, and also the land over which it passed, it was holden that he was not bound to make a new road instead of it (*i*).

Any person or corporation liable, *ratione tenuræ*, to the repair of a highway may now be exonerated from such liability in the manner pointed out by H. Act, 1862, s. 35, and H. Act, 1864, s. 24.

Another mode by which an occupier of land may become liable to repair a highway adjoining it, is by inclosure. Where a road is open to the land on either side of it, if the road become impassable or inconvenient, the public may have a right to go upon the adjacent land (*k*). An inclosure of the land from the highway deprives the public of this right; and for this reason it has been holden, that if the owner of the lands not inclosed, next adjoining to a highway, inclose his lands on both sides, he is bound to make a perfect, good way, so long as the inclosure lasts (*l*) if the public

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(*f*) *R. v. St. Giles*, 5 M. & S. 260.

(*g*) *R. v. Ecclesfield*, 1 E. & A. 341, per cur.

(*h*) *R. v. Skinner*, 5 Esp. 219.

(*i*) *R. v. Bamber*, 5 Q. B. 279.

(*k*) 1 Ro. Abr. 390, A. pl. 1, B. pl. 1. *Absor v. French*, 2 Show.  
38. *Taylor v. Whitehead*, Doug. 749.

(*l*) 1 Ro. Abr. 350, B. pl. 1. *Duncombe's case*, Cro. Car. 366.



**Introd.** had a right to go on the adjoining land. But if he fence it in one side only, he is liable to repair half of the way so fenced, to the centre thereof. It was held, however, in one case, that in order to create the liability to repair, the land inclosed must have been theretofore used by passengers, and have become part of the highway. Where the dedication to the public has been recent, it may be presumed that the owner dedicated so much land as was necessary for passage, and no more; and that he reserved a right to use the land adjoining for building or any other purpose. Moreover, whenever such liability has been created, an indictment must be preferred against the occupier, and not the owner of the land (a).

Under the H. Act, 1862, s. 46, a landowner may, without incurring a liability to repair, erect fences between a highway and his land adjoining, provided, within a highway district, he do so with the consent in writing of the highway board, or, in other places, of the parish surveyor or other authority.

Liability  
where the  
road is in two  
parishes.

If the boundaries of a parish pass across or through the middle of a common highway, and one side of the way is in one parish and the other side in another parish, the justices at a special sessions (b) of the highways, on complaint of the surveyor of either parish, shall proceed to examine the matter, and shall divide the whole of the highway by a transverse line crossing such highway into equal parts, or into such unequal parts as, in consideration of the soil, waters, floods, and inequality of such highway, or any other circum-

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*Hern's case*, W. Jon. 296. *R. v. Flecknoir*, 1 Burr. 465; 1 Hawk. c. 76, s. 7. See further as to the right of the public to go on land adjoining a highway, 1 *Russ. on Crimes*, by Prentice, p. 487.

(a) *R. v. Ramsden*, 27 L. J. M. C. 296; E. Bl. & E. 949.

(b) As to the justices now having jurisdiction at petty sessions, see H. Act, 1864, s. 46.

stances attending the same, they in their discretion may think just and right, and order that the whole of the way on both sides thereof, in any such parts, shall be maintained by one parish, and the whole in the other part by the other parish (c). Chap. III.

The fact that a road is a turnpike road does not prevent the parish in which it is situate or the township (if the township be liable to repair all roads within it) being indicted for the non-repair of it (d). Liability as to  
turnpike  
roads.

By stat. 4 & 5 Vict. c. 59 (noticed Part V.) on complaint by the clerk or treasurer of any turnpike trust to the justices at a special sessions (e) for the highways that the funds of the trust are insufficient for the repairs of the road, the justices may examine the state of the revenues and debts of such turnpike trust, the state and condition of the road, &c., and if, after such examination, it shall appear to them necessary, they may order a certain portion of the highway rate of the parish, &c., to be paid to the trustees, and to be laid out only in the repairs of the road (f).

When the inhabitants of any parish, &c., shall be indicted for not repairing any highway, being a turnpike road, and the court shall impose a fine for the non-repair of such road, such fine, together with the

(c) H. Act, 1835, ss. 58, 59, 60, *post*. As to form of indictment for not repairing one side of a road, see *R. v. St. Pancras*, Peake, N. P. 219.

(d) *R. v. Netherthong*, 2 B. & A. 179. See *R. v. French*, 48 L. J. M. C. 175, where the turnpike road had not been completed, and see *R. v. Mellor*, 1 B. & Ad. 32, where the Turnpike Act had expired. See *ante*, p. 4; *Cubitt v. Lady Caroline Mause*, 42 L. J. C. P. 278. See Part V. where certain Acts relating to turnpike and disturnpiked roads are noticed.

(e) As to the justices now having jurisdiction at petty session, see H. Act, 1864, s. 46.

(f) See 4 & 5 Vict. c. 59, ss. 2, 3; and 26 & 27 Vict. c. 94, Part V.

Introd. costs, shall be apportioned by the court between the inhabitants of the parish, &c., and the trustees or commissioners of the turnpike road, in such manner as to the court on consideration of the circumstances shall seem just (a).

As to the county contributing to the repair of disturnpiked roads, see H. Act, 1878, s. 13, Part III., and see Part V. As to a highway board repairing or contributing to the repair of a turnpike road, see 35 & 36 Vict. c. 85, ss. 14, 15, Part V.

Liability as to  
repair of foot-  
paths, stiles,  
&c.

By the interpretation clause, sect. 5, in the H. Act, 1835, the word "highway" shall be understood to mean, beside carriage and horseways, &c., "all footways, causeways, churchways (b), and pavements." In the absence of any particular liability *ratione tenuræ*, or otherwise, these last mentioned ways must be kept in repair by the parish, &c., in which they are situate.

By the General Turnpike Act, 3 Geo. 4, c. 126, s. 111, the trustees or commissioners may make and keep in repair a causeway for the use of foot passengers in, on, or by the side of any turnpike road; but by sect. 112, unless there be any special provision in the local Act, this is not to extend to the making, maintaining, or repairing any pavement, paved or pitched causeway or footpath on, or by the side of, any turnpike road in any town, village, or hamlet. Such pavement, &c., must be made, maintained, and repaired by and at the cost of the inhabitants of such town, village, or hamlet, or by such other persons as shall be in anywise liable for the repair. Under this section it was held that where a footway at the side of a turnpike road was paved in the centre, and

(a) 3 Geo. 4, c. 126, s. 110. *R. v. Upper Payworth*, 2 East, 413. *R. v. Pembridge*, 6 Jur. 1037.

(b) See s. 6, H. Act, 1835, note.

gravelled at each side, the whole must be repaired by the township (c). Chap. III.

As regards footpaths running across fields, it appears that, at common law, all stiles between different inclosures must be kept in good repair by the occupier of the field (d). When, however, the stile forms part of a fence which separates the fields of two different occupiers, it would seem that he whose fence it is must keep the stile in repair. He is bound to keep a sufficient fence against his neighbour, and where it crosses the footpath, it must be of such a nature as to afford a convenient passage to the public. The raising in height of a stile, so as to be less convenient to the public, has been held to be a nuisance (e).

Riding or driving on a footpath or causeway, by the side of a road, or obstructing the passage of it, is an offence under H. Act, 1835, s. 72. So is the act of ploughing up a footpath across a field under tillage, unless there is a right to do so (f). It is also punishable by an indictment as a nuisance (g).

The award under an Inclosure Act always directs by whom and how the different roads set out in it, private or public, shall be maintained. But where such an award, after setting out public and private roads, directed that all the ways, whether public or private, should be repaired in like manner as other public highways are repaired by the laws of this realm,—the court held that the award, so far as respected the private ways, was bad, and that therefore no indictment

Liabilities as to roads made under Inclosure Acts.

(c) *R. v. Mayor of Manchester*, 2 L. T. (N. S.) 280.

(d) 3 *Burn's Just. "Highways,"* 523.

(e) *Bakeman v. Burge*, 6 C. & P. 391.

(f) *Brackenborough v. Thoresby*, 33 J. P. 84. As to such a right see *ante*, p. 9.

(g) *R. v. Cross*, 3 Camp. 226.

Introd.

ment would lie against the parish for the non-repair of one of the private ways (a). Where, however, a way set out as a private road was afterwards for eighteen years used by the public as a public highway, the court said that it was a question for the jury whether there had not since been a dedication of the way to the public, and the jury having found in the affirmative, the court held that it must be deemed a public highway (b). Before, however, a parish can be charged with the repair of a highway set out or continued by inclosure commissioners, it must have been put by them into complete repair, and declared by justices at their special or petty sessions to have been fully and sufficiently formed and completed (c).

Liability as to  
the repairs of  
bridges and of  
the roads over  
them.

For the law relating to county bridges and the repairs of them, the reader is referred to *Chitty's Burn's Justice*, vol. I., title "Bridges," 1 *Russell on Crimes*, by Prentice, p. 530, and *Archbold's Criminal Pleading and Evidence*, in each of which the matter is treated of at large and the authorities are collected. For the purposes of this Manual, as confined to the subject of Highways, a very short general statement will suffice. *Prima facie*, and in the absence of usage, prescription, or statute to the contrary, the inhabitants of a county are, at common law, bound to the repair of all public bridges (d), whether for foot, horse, or carriages (e), within it, in the same manner as the

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(a) *R. v. Cottingham*, 6 T. R. 20.

(b) *R. v. Wright*, 3 B. & Ad. 681. See *R. v. St. Benedict*, 1 B. & Ad. 32. *R. v. Inhab. of Bradfield*, 43 L. J. M. C. 155.

(c) 41 Geo. 3, c. 109, ss. 8, 9. *R. v. East Hagbourne*, 28 L. J. M. C. 71. *R. v. Hatfield*, 4 A. & E. 156; H. Act, 1835, s. 23.

(d) 2 Inst. 701.

(e) *R. v. West Riding Yorkshire*, 5 Burr. 2594. *R. v. Salop*, 13 East, 95.

inhabitants of a parish are liable, *prima facie*, to the repair of their highways. And this liability exists in respect of *all* bridges of public utility, even though built by private individuals (*f*), if erected before 1802. As regards public bridges built since that time, the liability attaches only if they are built in a substantial and commodious manner, under the direction, or to the satisfaction of the county surveyor (*g*).

But the bridge, to make it a public one and render the county liable, must be "a common and public building over a river or water flowing in a channel more or less defined, whether such river or channel be occasionally dry or not" (*h*), and it must be a bridge, and not a mere culvert. "It is difficult to draw the line, and it is a question as to magnitude and construction" (*i*).

The liability, however, of the county is not confined to the repair of the bridge itself. By the common law, affirmed by the Statute of Bridges, 22 Hen. 8, c. 5, s. 9, it extends to the repair of the *road* over the bridge, and to the extent of 300 feet at each end of it; and this is still the case with respect to all county bridges built before 31st August, 1835 (*k*). With respect to county bridges built since that time, the liability of the county is confined to the repairs of the bridge itself, and the walls, banks, and fences of the raised causeways and raised approaches to the bridge

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(*f*) *Id.*

(*g*) 43 Geo. 3, c. 59, s. 5. This provision is somewhat altered by H. Act, 1878, ss. 21, 22, Part II.

(*h*) *R. v. Oxfordshire*, 1 B. & Ad. 289. *R. v. Whitney*, 3 Ad. & E. 69. *R. v. Derbyshire*, 2 G. & D. 97.

(*i*) BLACKBURN, J., in *Reg. v. Inhab. of Lancashire*, 32 J. P. 387. *R. v. Whitney*, 3 Ad. & E. 69.

(*k*) H. Act, 1835, s. 21.

**Introd.** — and the land arches thereof; and the highways leading to, passing over, and next adjoining to the bridge shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law, before the erection of the bridge, bound to repair the said highways.

Where, for any reason, a public bridge is not considered a county bridge, and no other persons are by usage or prescription, or statute bound to repair it, the liability falls upon the inhabitants of the parish in which it is situate, as being a public highway (*a*).

Where, under the authority of an Act of Parliament, a navigation company converts part of a public bridge into a swing bridge, the rest of the bridge remaining unaltered, and the public uses the bridge as before, the navigation company are not liable to repair the fixed part of the bridge: query, if they would be bound to repair the swing part (*b*).

Where such a company, having authority under their Act to cut through the soil of any person for making a new channel, cut through a highway and built a bridge which was used by the public: held, that the proprietors and not the county were liable to repair the bridge (*c*).

But where a person erected a mill and dam for his own benefit, and in so doing deepened the water of a public ford, which was, at times, very inconvenient to the public, and he built a bridge which the public

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(*a*) See interpretation clause, H. Act, 1835, s. 5. As to "hundred bridges" in Kent see 38 & 39 Vict. c. cxciv.

(*b*) *R. v. Great Western R. Co.*, 32 J. P. 21.

(*c*) *R. v. Kerrison*, 3 M. & S. 528, *Oliver v. N. E. R. Co.*, 43 L. J. Q. B. 198.

used: held, that the county, and not the miller was Chap. III. liable to repair the bridge (*d*).

As to a county authority contributing towards the erection of a bridge, see H. Act, 1878, s. 22; and as to the county borrowing money for rebuilding a bridge which on the expiration of a turnpike trust becomes a county bridge, see 38 & 39 Vict. c. xciv.

The repair of bridges across railways is provided for by the Railway Clauses Consolidation Act, 8 & 9 Vict. c. 20, ss. 46, &c. See Part VI. As to an urban sanitary authority constructing or adopting public bridges, &c., over or under canals, &c., see Public Health Act, 1875, s. 147, Part III.

As to the liability of a county to contribute to the repair of roads called "main roads," see H. Act, 1878, ss. 13—20, Part II. County to contribute to repair of main roads.

As to the liability of highway district boards to repair highways, see *ante*, p. 21, and Part II.; as to the liability of urban sanitary authorities to do so, see *ante*, p. 26, and Part III.; and as to the liability of rural sanitary authorities to do so, see *ante*, p. 26, and Part II. Highway district boards and urban and rural sanitary authorities, &c., to repair highways.

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(*d*) *R. v. Inhab. of Kent*, 2 M. & S. 512.



Introd.

CHAPTER IV.

REPAIRS—BY WHOM AND HOW MADE.

Repairs, by  
whom made.

WHERE there is no district or other board, or authority, or person liable to repair highways, they are repaired under the immediate direction of the surveyor of the parish or township in which they are situate.

When a district has been formed under H. Act, 1862, &c., the highway board is to maintain in good repair the highways within their district, and, subject to the provisions of the Act, as respects the highways in each parish within their district, perform the same duties, have the same powers, and be liable to the same legal proceedings, as the surveyor of the parish would have performed, had, and been liable to, if the Act had not passed (*a*). An estimate is to be made by the district surveyor, and laid before the board at their first meeting in each year, of the probable expenses in each parish during the year, and a copy of it, as approved or modified by the board, so far as relates to each parish, delivered to the waywarden thereof (*b*).

As to the powers and duties of a highway board formed in a parish where the population exceeds 5,000, see H. Act, 1835, ss. 18—20.

Urban sanitary authorities have to repair the highways within their districts as noticed, *ante*, p. 26; and rural sanitary authorities when they have the powers of highway boards have to do so, *ante*, p. 26.

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(*a*) H. Act, 1862, s. 17.

(*b*) *Id.*

As to the liability of other authorities and persons to repair highways, see *ante*, p. 27, Chap. 3. Chap. IV.

Repairs, how  
made.

Carriage or cart ways must be maintained to the extent of 20 feet width at the least (if the space within the fences allow it), horseways of not less than 8 feet, and footways at the side of the carriageway (which, however, cannot be made without the consent of the vestry) not less than 3 feet (c). Gates across carriageways must be 10 feet wide at least, and across horseways 5 feet at least (d). And the surveyor may make a road through any grounds adjoining a ruinous or narrow part of a highway (such grounds not being the site of any house, and not being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house, or inclosed ground set apart for building ground or as a nursery for trees), to be made use of as a public highway, whilst the old road is repairing, or widening, making compensation to the owner or occupier (e).

The H. Act, 1835, s. 51, enables the surveyor to dig for and get gravel and other materials from waste lands, rivers, and brooks, without paying for the same; and if sufficient cannot be had in that way, he may give a month's notice to the owner and occupier of any inclosed lands (not being a garden, &c.) within that or an adjoining parish, to appear before the justices at a special sessions for the highways, to show cause why such materials should not be had therefrom, the surveyor offering to make satisfaction for the same, and for any damage to the lands in getting and carrying them away; and the justices may make an order accord-

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(c) H. Act, 1835, s. 80.

(d) *Id.* s. 81.

(e) H. Act, 1835, s. 25.

Intro. ingly (a). Or the surveyor, with the consent of the vestry, may contract for getting the materials necessary for the repairs (b). He is however, forbidden under a penalty of £10, and perpetual disqualification for the office of surveyor, to have any part, share, or interest, in any contract for work or materials, unless with the consent in writing of two justices (c).

Where land has been allotted to a parish for obtaining materials, and the materials have been exhausted, the surveyor, with the consent of the vestry, and of justices, may sell such land and buy other land in lieu thereof (d).

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(a) H. Act, 1835, ss. 53, 54.

(b) H. Act, 1835, s. 46.

(c) Id. s. 46.

(d) Id. s. 48. Sec 39 & 40 Vict. c. 62, Part VII.

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## CHAPTER V.

## Chap. V.

### HOW FUNDS RAISED FOR REPAIRS, &c., OF HIGHWAYS.

WHERE a parish or township has to maintain and repair the highways therein, the necessary funds for the purpose are raised under the H. Act, 1835, s. 27, by which, in order to raise money for carrying the Act into execution, a rate shall be made, assessed, and levied by the surveyor upon all property which, on the 31st August, 1835, was liable to be rated to the poor, and upon such woods, mines, and quarries of stone, or other hereditaments, as have been usually rated to the highways; such rate to be signed by the surveyor, and allowed by two justices and published in the same manner as a poor rate (*e*). And for this purpose the surveyor shall have access to the poor rate of the parish, and may take a copy of the same (*f*). Every rate shall contain the names of the occupiers, the description of the property they occupy, and the full annual value thereof, and shall also specify the sum in the pound at which it is made; and no such rate shall exceed at any one time the sum of 10*d.* in the pound, or the sum of 2*s.* 6*d.* in the whole in any one year, unless with the consent of four-fifths of the ratepayers at a meeting specially called for that purpose (*g*).

And for levying and recovering the rate, the surveyor shall have the same powers, remedies, and privileges, as

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(*e*) H. Act, 1835 s. 27; see s. 82.

(*f*) Id. s. 28.

(*g*) Id. s. 29. See form of rate, sched. No. 4, H. Act, 1835,

Highway rate,  
when parish  
or township  
repairs its own  
highways.

**Introd.** the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor (a). A demand of the rate must be made upon the ratepayer, in the same manner as is required in the case of a poor rate, before any proceedings are taken against him for non-payment (b). And the exact sum legally due must be demanded, and the distress be for that sum and no more (c). The proceedings are by complaint, summons, and distress warrant; no conviction or order is necessary. The reader will find all the necessary forms in the sched. to 12 & 13 Vict. c. 14 (see Part IV). If the party feel himself aggrieved by the rate, or by any of the proceedings for the recovery of it, he may appeal to the next general quarter sessions, giving notice thereof, with a statement of the grounds of appeal, to the surveyor (d). There is no appeal to the petty sessions, as in the case of a poor rate, the stat. 6 & 7 Will. 4, c. 96, s. 6, giving such appeal, being confined seemingly to the case of a poor rate.

As to a person unable to pay a rate through poverty getting excused, see H. Act, 1835, s. 32.

Expenses of  
highway  
districts  
formed under  
H. Act, 1835.

As to raising money for the expenses of a highway district constituted under H. Act, 1835, see sects. 13—17 of the Act. A surveyor is appointed in each parish to make the highway rate in addition to the district surveyor.

Expenses of  
highway board  
constituted  
under H. Act,  
1862, &c. (e).

In general, all expenses of a highway board constituted under the H. Act, 1862, &c., including those

(a) Id. s. 34; H. Act, 1864, s. 34. As to these powers, &c., consult some work on the poor laws.

(b) *R. v. Benn and Church*, 6 T. R. 198.

(c) *Hurrell v. Wink*, 8 Taunt. 369.

(d) H. Act, 1835, ss. 105, 106, 107, 108. If a party has an exemption from the rate he should appeal. *R. v. Oxfordshire, JJ. of*, 18 L. J. M. C. 222; *Walker v. Gl. W. R. Co.* 29 L. J. M. C. 107.

(e) As to a highway board formed under the H. Act, 1835, in a parish where the population exceeds 5,000, see sects. 18—20 of that Act.

incurred in repairing and maintaining the highway of each parish within the district, are to be paid out of the district fund. Under exceptional circumstances parishes may be charged with the maintenance and repair of their own highways (*f*). The H. Act, 1864, s. 32, states how each parish in a district formed under the H. Act, 1862, shall contribute to the expenses and district fund.

The district surveyor of a highway board under the H. Act, 1862, has to submit to the board, at their first meeting in every year after the 25th March, an estimate of the expenses likely to be incurred during the ensuing year for maintaining and keeping in repair the highways in each parish within the district of the board, and to deliver a copy of such estimate as so approved or modified by the board so far as the same relates to each parish, to the waywarden of such parish. The above expenses are to be paid in accordance with precepts to be issued by the board to the waywardens and overseers of the several parishes.

The H. Act, 1864, s. 33, points out when the precept is to be directed to the former and when to the latter. When directed to the former the waywarden is to pay the sum required out of a separate rate; when directed to the latter the overseers are to pay it out of a poor rate to be levied by them, or out of monies in their hands applicable to the relief of the poor (*g*).

No contribution at any one time is to exceed 10*d.* in the pound, or the aggregate for the whole year 2*s.* 6*d.*, except with the consent of four-fifths of the ratepayers at a meeting specially convened. An appeal is given against the precept (*h*). The H. Act, 1864, s. 35, states

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(*f*) H. Act, 1878, s. 7; H. Act, 1864, s. 32.

(*g*) See H. Act, 1864, s. 34.

(*h*) H. Act, 1864, ss. 38, *et seq.*

**Introd.** how a highway board may enforce payments by waywardens and overseers.

The H. Act, 1864, s. 33, points out when the rate to be made to raise the money mentioned in the precept is to be made by the overseers and when by the waywardens. Waywardens and overseers to whom precepts are directed by highway board have the same powers as to assessing and levying the rate as overseers of the poor have with regard to a poor rate (*a*). Sect. 32 of the H. Act, 1864, states how the rateable value of the property is to be ascertained. A rate made by a waywarden must be published in the same way as a poor rate (*a*). Waywardens have to account to the highway board for the amount of the rates received by them (*a*).

Expenses of  
urban sanitary  
authorities.

Before making rates urban sanitary authorities have to cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made (Public Health Act, 1875, s. 218). How the cost of the repairs of highways by these authorities is to be provided for, see sect. 216 of the above Act, noticed in Part III. As to when it is necessary for an urban sanitary authority to make a highway rate, and as to the mode of doing so, see Public Health Act, 1875, ss. 216, 217.

Expenses of  
rural sanitary  
authorities.

By H. Act, 1878, s. 4, sub-s. 3, all expenses incurred by a rural sanitary authority in the performance of their duties as a highway board shall be deemed to be general expenses of such authority within the meaning of the Public Health Act, 1875; see sects. 229—231 of that Act: and see those sections as to making rates to meet precepts issued by rural sanitary authorities.

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(*a*) H. Act, 1864, s. 33.

## CHAPTER VI.

## Chap. VI.

### COMPELLING REPAIRS OF HIGHWAYS.

WHEN the parish is bound to repair (as to which see *ante*, p. 27) and makes default in maintaining or repairing a highway, the county authority, that is to say, the justices at quarter sessions, may enforce the performance of that duty—(H. Act, 1878, s. 10)—or proceedings, it seems, may be taken under H. Act, 1835, ss. 94, 95, by summoning the surveyor of highways, &c., as mentioned in those sections.

If a highway board formed under H. Act, 1862, or an urban sanitary authority makes default in maintaining or repairing a highway within its jurisdiction, the county authority may enforce the performance of the duty under H. Act, 1878, s. 10 (*b*).

The compelling the repair of a highway by a party liable *ratione tenuræ* is provided for by H. Act, 1862, ss. 34, 35, and H. Act, 1864, s. 23. If the highway board do not proceed under these sections proceedings can be taken under the H. Act, 1835, s. 94.

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(*b*) See also H. Act, 1862, ss. 18, 19, which contain provisions as to compelling a highway board to repair. See also as to the powers of the Local Government Board with reference to an urban sanitary authority; Public Health Act, 1875, ss. 299—302.



Introd.

CHAPTER VII.

NUISANCES TO HIGHWAYS.

*At Common Law*, p. 48.

*By Statute*, p. 56.

NUISANCES AT COMMON LAW.

*Obstruction of the Highway*, p. 48.

*Act or default of owner of adjoining land*, p. 53.

*Remedy for*, p. 54.

Obstruction  
of highway.

IN the case of an ordinary highway, although it may be of a varying and unequal width, running between fences, one on each side, the right of passage *prima facie*, and unless there be evidence to the contrary, extends to the whole space between the fences ; and the public are entitled to the use of the entire of it, as the highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot passengers (*a*). It was therefore held, that telegraph posts, placed on the space between the metalled part of a road and the fence, such posts being of such sizes and dimensions as to obstruct the passage of carriages and horses, or foot passengers upon the parts of the highway where they stood, were a nuisance, even though sufficient space were left for public traffic (*b*).

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(*a*) *R. v. Wright*, 3 B. & Ad. 681.

(*b*) *R. v. United Kingdom Telegraph Co.*, 31 L. J. M. C. 166. See 41 & 42 Vict. c. 76, the Telegraph Act, 1878, and other acts of parliament referred to in that act which relate to placing telegraphs and posts in and across public highways.

*A fortiori*, any obstruction which interferes with the free use of the hard or metalled part of the road is a nuisance. Thus, erecting a gate across it (c). So is the locking or fastening a gate, already erected there by some other person. And the like, as to all other injuries to a highway, as by digging a ditch or making a hedge across it, or laying logs of timber in it (d), carrying an unreasonable weight with an unusual number of horses (e), suffering the ditches adjoining a highway to be foul by reason whereof it is impaired, or the boughs of trees to overhang the road in such manner as thereby to incommode the passage (f), or by doing any act or default by which the highway is rendered less commodious to the King's subjects.

There are some acts which a householder is allowed to do as necessarily incidental to the enjoyment of his property, such as the obstruction caused by the unloading of carts, the putting up hoards for repairs (g), and other similar temporary obstructions. Such matters may well be said to be a use of the highway as a highway; and this is made more clear by the rule that, where there is an excess or abuse, in such case the party is indictable. The owner of a house cannot, without parliamentary powers for the purpose, authorize the taking up of the pavement, and digging trenches in the roadway, in order to lay down service pipes from a main to his house (h). An indictment will lie against a gas

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(c) 1 Hawk. c. 76, s. 146. As to the county authority making bye-laws respecting gates, see H. Act, 1878, s. 26.

(d) *Id.* s. 144.

(e) *R. v. Egerley*, 3 Salk. 183. *R. v. Leach*, 6 Mod. 145. As to extraordinary traffic, see H. Act, 1878, s. 23.

(f) 1 Hawk. c. 76, ss. 50, 52.

(g) *Bush v. Steinman*, 1 B. & P. 407.

(h) COCKBURN, C. J., in *R. v. Longton Gas Co.*, 29 L. J. M. C. 119.

Introd.

company for taking up the pavement for this purpose (a). Where a carrier, having warehouses in a public street in a city, occupied one side of the street opposite to his warehouses in loading and unloading his waggons, for several hours at a time, both day and night, and having one waggon at least usually standing before his warehouses, so that no carriage could pass on that side of the street, and sometimes even foot passengers were incommoded by cumbersome goods lying on that side ready for loading: this was holden to be a public nuisance, although there was room for two carriages to pass on the opposite side of the street (b). So, where the proprietor of stage coaches, running between Greenwich and London, allowed them to stand in the public street at Charing Cross for three quarters of an hour at a time, taking up passengers, receiving parcels, &c.: this was holden to be a public nuisance, Lord ELLENBOROUGH, C. J., saying, that "the King's highway was not to be used as a stable-yard:" a stage coach may set down or take up passengers in the street, this being necessary for public convenience; but it must be done in a reasonable time; and private premises must be provided for the coach to stop in during the interval between the end of one journey and the commencement of another (c). Where the proprietor

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(a) *Att.-Gen. v. Cambridge Gas Consumers Co.*, 33 J. P. 147, 3 De G. M. & G. 304. *Att.-Gen. v. Sheffield Gas Consumers Co.*, 1 L. R. C. 66. As to a highway board making and enforcing an agreement with a gas company that the latter may dig up the highway and pay for the surface broken, see *The Edgeware Highway Board v. Harrow District Gas Co.*, 44 L. J. Q. B. 1. Sometimes gas companies are empowered to lay their pipes, &c., under public highways, see 33 & 34 Vict. c. 70; 34 & 35 Vict. c. 41; 36 & 37 Vict. c. 89.

(b) *R. v. Russell*, 6 East, 427.

(c) *R. v. Cross*, 3 Camp. 224.

of a colliery made a railroad from it to a seaport town; the railroad was 400 yards long, and laid along a turn-pike road, which it narrowed so far that in some places there was not a clear space for two carriages to pass; this was holden to be a public nuisance, although the defendant allowed the public to use his railroad, on payment of a toll (*d*). So, where a tramway was made along a highway, and it was proved that accidents had happened in consequence of its being laid down, and that it was a material obstruction of the ordinary use of the highway for horses and carriages, it was held a nuisance; although it might be proved that a great number of persons were carried along the tramway, that a saving of money was effected, and that it was a great advantage to the public in general who used the highway (*e*). So, where the defendant, having a small timber yard in a narrow street, was in the habit of having long pieces of timber laid down in the street, and sawed into shorter lengths, for the purpose of getting them into his yard: this was holden to be a nuisance, Lord ELLENBOROUGH, C. J., saying, that “the defendant was not to eke out the inconvenience of his premises, by taking in the public highway into his timber yard; if the street were too narrow, he should remove to a more commodious situation for carrying on his business” (*f*). It is not necessary, in order to render a person liable to an indictment for a nuisance, to show that he immediately obstructed the public way, or even intended to do so; it is sufficient if the inconvenience

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(*d*) *R. v. Morris*, 1 B. & Ad. 441.

(*e*) *R. v. Train*, 31 L. J. 169. See the acts relating to tramways authorising their construction, &c., *post*, Part IX.

(*f*) *R. v. Jones*, 3 Camp. 230.

**Introd.** result as a consequence of any public exhibition or act: *e.g.*, the erection of a booth to display rope dancing, or other attractive spectacle, near a public street (a); or the exhibition of pictures or effigies at a window in a street (b), which attract a crowd, and cause the thoroughfare to be obstructed: and it is not essential that the effigies should be libellous, or that the crowd in either case should consist of idle, disorderly, or dissolute persons.

A public navigable river, is a public highway, and any obstruction to it is a public nuisance, in like manner as to a highway on land (c). But where a vessel sank by accident or misfortune in a public river, it was holden that the owner was not indictable as for a nuisance, in not removing it (d). Where upon the trial of an indictment for a nuisance, by erecting staiths upon the river Tyne for the loading of ships with coals, BAYLEY, J., told the jury that if they thought that the abridgment of the right of passage occasioned by these erections was for a public purpose, and produced a public benefit, and if the erections were in a reasonable situation, and a reasonable space was left for the passage of vessels on the river, they should acquit the defendants; and he pointed out to the jury, that, by means of the staiths, coals were supplied at a cheaper rate, and in a better condition, than they otherwise could be, which was a public benefit: it was holden by BAYLEY and

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(a) Bac. Abr. Nuisance. *R. v. Moore*, 3 B. & Ad. 184.

(b) *R. v. Carlisle*, 6 C. & P. 637. See *R. v. Sarmon*, 1 Burr. 516; 1 *Russ. on Crimes*, by Prentice, p. 470.

(c) See *R. v. Lord Grosvenor*, 2 Stark. 511. See also as to canals, *R. v. Trafford*, 1 B. & Ad. 874.

(d) *R. v. Watts*, 2 Esp., 675. As to the duty to place a buoy, &c., see *Abbott on Shipping*, by Prentice, p. 593.

HOLROYD, JJ., that this direction was correct (e). But Chap. VII.  
 this decision has been much doubted; and it seems to be now agreed that the fact of an act being productive of more public benefit than public inconvenience, does not prevent its being a nuisance (f). As to an obstruction, such as a door step, or an area flap, existing at the time of the dedication of a highway, or one which has continued from time immemorial, see *ante*.

It seems to have been held by Lord KENYON, C. J., that the existence of a nuisance for a great number of years might render it legal (g); but the contrary now seems to be settled (h).

The public take a highway on the terms on which it is granted to them, and, as between them and the owner of the land, must use the way subject to its incidental risks (i). But the public are entitled to its use without being subject to danger or inconvenience from the negligence or acts of such owner, and for accidents arising from such acts or negligence the owner may be not only civilly liable, but criminally punishable. Thus, a person has been held guilty of manslaughter, who turned out on a common, through which there was an unfenced public footpath, a horse known to be

Act or default  
of owner of  
adjoining  
land.

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(e) *R. v. Russell*, 6 B. & C. 566, Lord TENTERDEN, C. J., *dict.*

(f) See *R. v. Gregory*, 5 B. & Ad. 555. And see *R. v. Train* 31 L. J. M. C. 169. *R. v. U. K. Electric Telegraph Co.*, 31 L. J. M. C. 166.

(g) Peake, N. P. 391.

(h) *Weld v. Hornby*, 7 East, 199. *R. v. Cross*, 3 Camp. 227. *Chad v. Tiled*, 5 Moore, 185. *Van Vooght v. Winch*, 2 B. & Ad. 662.

(i) *Fisher v. Prowse*, 2 B. & S. 770. *Cooper v. Walker*, 7 L. T. (N.S.) 71.

**Introd.** vicious, and a child upon, or near to the footpath, was killed by a kick from the horse (a). So, where the owner of land immediately adjoining a highway makes an excavation so near the highway as to be dangerous to the public using it (b). So, negligently blasting stone in a quarry, and thereby projecting large pieces of stone, so as to endanger the safety of persons on the highway adjoining the quarry (c).

**Remedy for nuisance.**

The usual remedy for a public nuisance is by indictment; and, if the nuisance is continued, by further indictment: for every continuance of a public nuisance is a nuisance (d).

Where there is a special damage to [person, trade, or calling, arising out of a common cause of injury, the particular person sustaining injury may maintain an action (e).

But if the nuisance complained of be an obstruction of the highway, it must appear that, on the part of the plaintiff, there was no want of ordinary care to avoid it (f).

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(a) *R. v. Dant*, 29 J. P. 359.

(b) *Hardcastle v. S. York Railway Co.*, 4 H. & N. 67; 28 L. J. Ex. 139. *Corby v. Hill*, 4 C. B. (n.s.) 556. *Shoebottom v. Egerton*, 32 J. P. 360; but see *Hownsell v. Smyth*, 7 C. B. (n.s.) 731.

(c) *R. v. Mutters*, 34 L. J. M. C. 22.

(d) 1 *Russ. on Crimes*, by Prentice, p. 469. *R. v. Stead*, 1 T. R. 142. As to granting a new trial of an indictment for obstructing a highway after an acquittal, see *R. v. Duncan*, 50 L. J. M. C. 95.

(e) *R. v. Dewenap*, 16 East, 196. *Rose v. Miles*, 4 M. & S. 101. *Greasley v. Codling*, 2 Bing. 263. *Chichester v. Lethbridge*, Willes, 71. *Winterbottom v. E. of Derby*, 31 J. P. 566. *Iveson v. Moore* 1 Id. Raym. 486. See *Clark v. Chambers*, 47 L. J. Q. B. 427, where the defendant's unlawful act was the primary cause of the evil, although the immediate cause of the injury was the act of some other person.

(f) *Butterfield v. Forrester*, 11 East, 60. *Flower v. Adam*, 2 Taunt. 314.

A summary remedy for any "wilful obstruction of the free passage of any highway," is also provided by H. Act, 1835, s. 72, where the inconvenience has arisen within six months. Chap. VII.

Moreover, by the common law, any one who is obstructed in the exercise of his own right of passing on a highway may himself abate the obstruction by removing it; but this "private and summary method of doing one's self justice" (g) must be strictly confined to the necessary exercise of his own right. No man can at his pleasure go out into a public highway and remove an obstruction which may happen to be there. He must show some necessity for going over the part obstructed (h). But it seems that a person representing the public, as a surveyor of highways, has a right to remove same (i).

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(g) 3 Black. Com. 5.

(h) *Dimes v. Petley*, 19 L. J. Q. B. 449; 15 Q. B. 276. *Bute-man v. Bluck*, 21 L. J. Q. B. 406.

(i) *Bagshaw v. Buzton Local Board*, 45 L. J. Ch. 263. *Denny v. Thowites*, 46 L. J. M. C. 141.



Introd.

## NUISANCES BY STATUTE.

*Trees, &c., on or near the highways, p. 56.*

*Hedges, p. 56.*

*Ditches, p. 56.*

*Encroaching on highways, p. 59.*

*Steam engines, windmills, &c., p. 60.*

*Gates on railways, p. 60.*

*Riding on footpaths, injuring the road, making fires, &c., p. 60.*

*Expenses of repairs incurred by extraordinary traffic, p. 60.*

*Matters laid on highways, p. 60.*

*Cattle, &c., straying on highways, p. 61.*

*Feeding cattle impounded, p. 61.*

*Penalty for pound-breach, p. 62.*

*Powers of urban and rural sanitary authorities, p. 62.*

**Trees, &c., on  
or near the  
highway.**

It is not lawful to plant any tree, bush, or shrub on any carriageway or cartway, or within the distance of 15 feet from the centre thereof (a).

**Hedges.**

Sect. 65 of the H. Act, 1835, noticed Part I., points out the mode of proceeding when highway is prejudiced by the shade of hedges, &c. The time for cutting and pruning hedges is pointed out by sect. 66 of the Act.

**Ditches.**

At common law a duty exists on the part of the occupier of land adjoining a highway to cleanse and scour his own ditches to such an extent as to prevent nuisances or obstruction to passengers. This duty, however, can only be enforced by indictment (b).

By H. Act, 1835, s. 67, the surveyor has power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses, and also to make and

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(a) H. Act, 1835, s. 64. What shall be deemed the centre, see sect. 63 of the Act.

(b) 1 Hawk. P. C. c. 76, s. 52; Bac. Abr. Highway E.

lay such trunks, tunnels, plats, or bridges as he shall Chap. VII. deem necessary, in and through any lands adjoining or lying near to any highway, upon paying the owner or occupier of such lands (provided they are not waste or common), for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are herein directed to be settled and paid (c).

The effect of the above section, according to the opinion of the law officers of the Crown (29 J. P. 319), is to empower, but not to compel, the surveyor to cleanse ditches in a more effectual manner than landowners could be compelled to cleanse them. They advised, however, that in order to avoid disputes on the subject, the surveyor should give the adjoining occupiers notice to cleanse the ditches, and only resort to the powers of the Act in the event of their not complying with the notice. They considered also that if the materials taken out are claimed by the landowner, they are his property.

Where, in a turnpike road, a landslip occurs, and carries loose earth and stones into the road, it is the duty of the trustees, and not of the adjoining occupier, to remove the same, and scour and keep open the ditch (d).

If any owner, occupier, or other person shall alter, obstruct, or in any manner interfere with any such ditches, &c., after they shall have been made by or taken under the charge of such surveyor, or district

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(c) H. Act, 1835, s. 67. See *Peters v. Clarkson*, 13 L. J. M. C. 153; 8 Sc. (N.R.) 384.

(d) *Merivale v. Trustees of Exeter Roads*, 32 L. J. M. C. 165. See H. Act, 1835, s. 26.

**Introd.** surveyor, and without his authority and consent, such owner, &c., shall be liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the works so altered, obstructed, or interfered with, and shall also forfeit any sum not exceeding three times the amount of such charges and expenses (a).

The practice of collecting the drainage of a whole town and diverting it into a neighbouring stream, so as to convert such stream into the common sewer of the town, has naturally given rise to many complaints on the part of the owners and occupiers of land lower down the stream, and the courts of equity have frequently interfered by injunction to restrain the continuance of the practice. In a case brought before him, Sir W. P. Wood, V. C., said: "It has been decided both at law and in this court, that no person is entitled, on the ground of ancient custom or privilege, to collect a mass of sewage matter and pour it at one point into a stream in such a quantity that the river cannot dilute it, on its passage down to the lower riparian proprietors, as the effect of such an act is to create an evil which is illegal, and which is such as no custom can authorise" (b).

As to the powers of urban and rural sanitary authorities over sewers, drains, &c., see Public Health Act, 1875, s. 48, &c., noticed in Part III. and some work on this Act.

Encroaching  
on the high-  
way.

Any encroachment on the highway which is calculated to restrict the rights, or interfere with the con-

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(a) H. Act, 1835, s. 68.

(b) *Att.-General v. Richmond*, 35 L. J. Chan. 597; 30 J. P. 708; see also *Goldsmid v. Tunbridge Wells Imp. Com.* 35 L. J. Chan. 88, 382.

venience of the public, is a public nuisance, and is Chap. VII. indictable as a misdemeanor (c); and no length of time will legalise it, or prevent its being indictable (d), or the public from resuming possession of its site. But the encroachment must be to such an extent as to be a practical and appreciable obstruction to the public; and therefore, where upon an indictment for encroaching upon the highway by means of a chapel, the jury found that a portion of the site of the chapel was part of the public highway, but that the obstruction to the public was inappreciable; it was held that the judge was right in directing a verdict of "not guilty" to be entered (e).

A summary remedy is also provided by H. Act, 1835, s. 69, and H. Act, 1864, s. 51, where encroachments, &c., are made on the highway within 15 feet of the centre thereof; and see 28 & 29 Vict. c. 107, s. 2, which relates to certain roads which, having been turnpike roads, have become ordinary highways.

An information or complaint for a penalty under either of the above Acts must be laid within 6 calendar months from the time when the matter of such complaint or information arose (f); that is, from the time when the encroachment was first made (g); and, therefore, where more than 6 months have been suffered to elapse without taking any proceedings the only remedy is by indictment.

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(c) 1 Hawk. P. C. 76, ss. 144, 146. 1 *Russ. on Crimes*, by Prentice, p. 469.

(d) *R. v. Cross*, 3 Campb. 224.

(e) *R. v. Leprue*, 30 J. P. 723. See also *R. v. Russell*, 6 B. & C. 566; *R. v. Ward*, 4 A. & E. 384; *R. v. Tindall*, 6 A. & E. 143; *R. v. Betts*, 16 Q. B. 1022; *R. v. Russell*, 3 E. & B. 942.

(f) 11 & 12 Vict. c. 43, s. 11.

(g) *Weld v. Hornby*, 7 East. 199; *Chad. v. Tilsed*, 4 B. & B. 403.

**Introd.**

As to steam engines, windmills, &c., see H. Act, 1835,

Steam engines, s. 70, *post*, Part I.

windmills, &c.

Gates on rail-

ways.—Acci-

dents to

travellers

crossing on

level.

With respect to gates on railways and accidents to travellers crossing on a level, see 5 & 6 Vict. c. 55, s. 9; 8 & 9 Vict. c. 20, s. 47, noticed in Part VI.

Persons crossing a railway on a level must exercise ordinary vigilance (*a*); but the company, on their part, are bound to give due warning of the approach of a train, and to take all reasonable precaution for the protection of the public (*b*). It is the duty of the company to keep a person to open and shut the gates for carriages crossing the railway (*c*). See further as to this, *post*, Part VI.

Riding on footpaths, injuring the road, making fires, baiting bulls, &c.

See H. Act, 1835, s. 72, noticed, Part I., which contains provisions relating to riding on footpaths, injuring the road, making fires, baiting bulls, &c.

Certain other offences committed upon a highway, *e. g.*, indecent exposure of person with intent to insult a female, exhibition of indecent prints, &c., gambling, begging, riotous and indecent misbehaviour by common prostitutes, and frequenting by suspected persons or reputed thieves, with intent to commit a felony, are punishable under the Vagrant Act, 5 Geo. 4, c. 83 (*d*).

Expenses of repairs incurred by extraordinary traffic, &c., on highway. Matters laid on highways.

As to expenses of repairs incurred by extraordinary traffic or weight passing on a highway, see H. Act, 1878, s. 23, Part II., Chap. 14.

As to the surveyor, &c., removing matters laid on highways, see H. Act, 1835, s. 73; H. Act, 1864, s. 51.

(*a*) *Stubley v. London and N. W. Rail. Co.* 29 J. P. 808.

(*b*) *Bilbee v. London B. and S. C. Rail. Co.* 18 C. B. (N.S.) 584; *Stapley v. London, B. and S. C. Rail. Co.* 29 J. P. 824; *Lunt v. London and N. W. Rail. Co.* 30 J. P. 327; *Walker v. Mid. Rail. Co.* 30 J. P. 535.

(*c*) *Wyatt v. G. W. Rail. Co.* 29 J. P. 630.

(*d*) See note to H. Act, 1835, s. 72, Part I. 36 & 37 Vict. c. 38.

As to cleansing of streets by urban sanitary authority, Chap. VII.  
see Public Health Act, 1875, ss. 42, *et seq.*, noticed in  
Part III.

The enactment which now applies to cattle straying <sup>Cattle, &c.,</sup>  
on highways is the H. Act, 1864, s. 25, which see Part II. <sup>straying on</sup>  
<sup>highways.</sup>

Rights of pasturage must be exercised subject to the  
paramount right of the public to pass freely along the  
road.

By 12 & 13 Vict. c. 92, s. 5, it is enacted that <sup>As to feeding</sup>  
every (e) person impounding any animal shall provide <sup>cattle im-</sup>  
<sup>pounded.</sup>  
it, during its confinement, with a sufficient quantity of  
fit and wholesome food and water under a penalty of  
20s. By sect. 6, in case such animal be left without fit  
and sufficient food and water for more than 12 succes-  
sive hours, any person whatever may supply it with  
food and water, and the reasonable cost shall be paid by  
the owner of the animal before it is removed, and may  
be recovered in the same manner as penalties under  
that Act.

By 17 & 18 Vict. c. 60, s. 1, every person who has  
impounded any animal and supplied it with food and  
water, may recover from the owner not exceeding  
double the value of the food and water in like manner  
as is provided for the recovery of penalties under  
12 & 13 Vict. c. 92; and every person who shall  
supply such food and water may, instead of proceeding  
for the recovery of the value, after the expiration of  
7 clear days from the day of impounding, sell the  
animal openly at any public market (after having given  
3 days' public printed notice thereof) for the most  
money that can be got for the same, and apply the  
produce in discharge of the value of the food and water

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(e) This does not include the keeper of a common pound :  
*Dargan v. Davies*, 46 L. J. M. C. 122.

**Introd.** supplied and the expenses of and attending the sale, and render the overplus (if any) to the owner.

**Penalty under H. Act, 1835, for pound breach, &c.** As to the penalty under the H. Act, 1835, for pound breach, &c., see sect. 75 of that Act, *post*, Part I.

As to impounding cattle, sheep, and swine grazing upon roads or ways set out under the General Inclosure Act, see stat. 8 & 9 Vict. c. 118, s. 100.

**Powers of urban and rural sanitary authorities under P. H. Act, 1875.** Under the Public Health Act, 1875, urban and rural sanitary authorities have certain powers given to them over nuisances affecting highways; some of the enactments on this subject are set out in Part III. Some work on the Act should be consulted on this subject.

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## CHAPTER VIII.

## Chap. VIII.

### REGULATIONS AS TO WAGONS, DRIVERS, &c.

THE name and place of abode of the owner of every wagon, cart, or other such carriage, shall be painted conspicuously on the off side thereof, under a penalty of 40s. (a).

As to the justices of a county at their quarter sessions making bye-laws for prohibiting or regulating the use of certain wheels on carts and carriages, and as to locking wheels, &c., and as to regulating the use of bicycles, see H. A. 1878, s. 26.

One person may act as driver of two carts, &c., if not drawn by more than one horse each, and the last horse be attached to the preceding cart, &c., by a rein not more than 4 feet in length; a person acting as driver of more than two carts, &c., or of two carts where the horses of the latter are not so attached, shall forfeit 20s. (b).

As to misbehaviour of drivers, see H. Act, 1835, s. 78, *post*, Part I.

The Locomotive Acts are noticed in Part VIII.

Misbehaviour  
of drivers.

Locomotives  
on highways.

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(a) H. Act, 1835, s. 76.

(b) H. Act, 1835, s. 77.



ALTERATIONS IN HIGHWAYS.

*Widening highways, p. 64.*

*Stopping up or diverting highways, p. 64.*

*Diversion of footpath for rifle practice, p. 65.*

*Diversion for military purposes, p. 65.*

*Highways crossed and diverted by railways, p. 65.*

*Improvements in highways, p. 65.*

*Unnecessary highways may be declared not repairable at the public expense, p. 65.*

Widening  
highways.

H. Act, 1835, s. 82, provides for widening highways, and sect. 83 states by whom the new road is to be repaired.

Under the H. Act, 1864, ss. 47, 48, a highway board may, among other improvements, widen any road, or cut off corners where land is required to be purchased for the purpose;—and see as to the powers of an urban sanitary authority in these matters Public Health Act, 1875, s. 154, Part III.

Stopping up  
or diverting  
highways.

It is an established maxim that “once a highway, always a highway.” Perhaps under circumstances it may be presumed that a highway was legally stopped, see *ante*, p. 3. Formerly the only method of legally stopping a highway was by the writ of *ad quod damnum*; now proceedings for the purpose may be taken before magistrates under the H. Act, 1835 (see ss. 84—93) (a).

The former method is now, on account of the expense and difficulty attending it, never resorted to, and it may be questionable whether it is not virtually abolished by the H. Act, 1835.

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(a) See H. Act, 1862, s. 44. There are other statutes by which highways under certain circumstances may be stopped up, see notes to these sections, *post*.

By H. Act, 1862, s. 44, all the provisions of the H. Act, 1835, for widening, diverting, and stopping up highways, are made applicable to all highways which now are or may hereafter be paved, repaired, or cleansed under or by virtue of any local or personal Act, or which may be situate within the limits of any such Act, except such as are repairable by any railway, canal, or river navigation company. Chap. IX.

As to diversion of footpaths for convenience of rifle practice see 26 & 27 Vict. c. 65, s. 37, *post*. Diversion of footpath for convenience of rifle practice.

As to diversion of footpaths for military purposes see 23 & 24 Vict. c. 112, s. 40, *post*. Diversion for military purposes.

By the Railway Clauses Consolidation Act, 8 & 9 Vict. c. 20, provisions are made for cases where, in the construction of a railway, it is necessary to divert a highway, or to cross it, either on a level or by means of a bridge above or below the level. The sections of the Act, applicable to highways, will be found in Part VI. They, however, only apply to railways authorized to be constructed by subsequent special Acts with which the general Act is incorporated. Highways crossed and diverted by railways.

A highway board established under H. Act, 1862, may, with the consent of justices, under certain restrictions, and within certain limits, make certain improvements in a highway within their jurisdiction. For these purposes money may be borrowed on the security of the highway rates (*b*). Improvements in highways.

As to its being declared that unnecessary highways shall not be repairable at the public expense see H. Act, 1864, s. 21, and H. Act, 1878, s. 24. If from change of circumstances the highway becomes of public use, &c., the court of quarter sessions may direct that the liability to repair shall revive (*c*). Unnecessary highways may be declared not repairable at the public expense.

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(*b*) H. Act, 1864, ss. 47, 48. (*c*) 35 & 36 Vict. c. 85, ss. 15, 16.

**Introd.**

**CHAPTER X.**

**PROCEEDINGS FOR PENALTIES &c., APPEAL.**

**Special sessions for the highways, Court of Summary Jurisdiction.**

By H. Act, 1835, s. 45, the justices of the peace within their respective divisions, are to hold certain special sessions in every year for executing the purposes of this Act.

By H. Act, 1864, s. 46, the justices in petty sessions at their usual place of meeting may exercise any jurisdiction which they are authorized under the H. Acts, or any of them, to exercise in special sessions ; and no justice of the peace shall be disabled from acting as such at any petty or special or general quarter sessions, in any matter, merely on the ground that he is, by virtue of his office, a member of any highway board, complaining, interested, or concerned in such matter, or has acted as such at any meeting of such board. (a)

**The Summary Jurisdiction Acts.**

The 11 & 12 Vict. c. 43, is known as the Summary Jurisdiction Act, 1848, and is entitled "an Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders."

Sect. 10 of the Act relates to the manner of making complaints before justices upon which orders may be made, and of laying informations for any offence or act punishable upon summary conviction.

By sect. 11 of this Act "in all cases where no time is already or shall hereafter be specially limited for

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(a) See H. Act, 1862, s. 38.

Chap. X.

making any such complaint or laying any such information in the Act or Acts of Parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose."

The Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, has much altered the powers and duties of magistrates in proceedings before them, also the mode of procedure.

This Act amongst other things enables a Court of Summary Jurisdiction in certain cases to reduce the prescribed time of imprisonment and to dispense with hard labour and otherwise mitigate the prescribed punishment (sect. 4). A scale of imprisonment for nonpayment of money or fines is given (sect. 5). Time may be given for payment of same (sect. 7). A provision is made as to the payment of costs in the case of small fines (sect. 8). The Court of Summary Jurisdiction may enforce recognizances (sect. 9). Special provisions are made as to warrants of commitment for non-payment of sums of money and as to warrants of distress (sect. 21). Provisions are made as to appeals to quarter sessions (sects. 19, 31—33). Summary orders directing something to be done not being the payment of money, may be enforced in a particular way (sect. 34). Civil debts cannot be enforced by commitment except in certain cases &c. (sect. 35). Witnesses out of the jurisdiction may be summoned (sect. 36). The Act states how offences may be described in proceedings, and states what defects shall not avoid a warrant of commitment or distress (sect. 39). There may be a case stated by quarter sessions without a *certiorari* (sect. 40). Service of process &c., and of the handwriting to certain docu-

**Introd.** ments may be proved by solemn declarations made before certain persons (sect. 41). A mode of procedure in the execution of distress warrants is given (sect. 43). Offences committed on the boundary of the jurisdiction of a court or on a voyage or partly within such jurisdiction &c., may be tried at such court (sect. 46).

By sect. 50 of the Act in this Act and in any future Act, if not inconsistent with the context, the following expressions shall have the meaning hereinafter respectively assigned to them; that is to say

The expression "The Summary Jurisdiction Act, 1848," shall mean the Act of the 11 & 12 Vict. c. 43 (*supra*).

The expression "The Summary Jurisdiction Acts," (a) and the expression "The Summary Jurisdiction (English) Acts," shall respectively mean the Summary Jurisdiction Act, 1848, and this Act and any Act, past or future, amending the Summary Jurisdiction Act, 1848, or this Act.

The expression "Court of Summary Jurisdiction," (a) shall mean—

Any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by or who is or are authorized to act under the Summary Jurisdiction Act or any of such Acts.

In any future Act, if not inconsistent with the context—

The expression "petty sessional court," shall have the same meaning as it has in this Act.

The expression "occasional court-house," shall mean such police station or other place as is for the time being appointed in pursuance of this Act to be used as an occasional court-house.

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(a) See H. Act, 1878, s. 36, Part II., Chap. 14.

In taking proceedings before magistrates under the **Chap. X.**  
H. Acts for the recovery of penalties, &c., the provisions  
in the Summary Jurisdiction Acts must be attended  
to;—they will be found in all recent works treating of  
proceedings before magistrates.

The provisions as to enforcing penalties under H. Act, 1835, are in sects. 101—104, of the Act, *post*, Part I. Penalties, &c.  
under H. Act,  
1835, how  
enforced.

An appeal under H. Act, 1835, is governed and regulated by sects. 106, 107, *post*, and see Index: and see Appeal under  
H. Act, 1835.  
Summary Jurisdiction Act, 1879, ss. 19, 31, 33.

As to penalties under H. Acts, 1862 and 1878 and Penalties  
under H. Act,  
1862, 1878,  
and appeal.  
appeal under those Acts see H. Act, 1862, s. 47; H. Act, 1878, ss. 36, 37, and Index, titles, “Penalties”  
and “Appeal.” See also Summary Jurisdiction Acts,  
1848, 1879; and as to appeal, see also Summary Jurisdiction Act, 1879, ss. 19, 31-3.

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## PART I.

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### CHAPTER XI.

### Chap. XI.

## HIGHWAY ACT, 1835.

5 & 6 WILL. IV. CAP. 50 (a).

*An Act to consolidate and amend the Laws relating to Highways in that Part of Great Britain called England (b).*

[31st August, 1835.]

I., II., III., IV. These sections are repealed by 37 & 38 Vict. c. 35, the Statute Law Revision Act, 1874.

V. And be it further enacted, that in the construction of this Act the word "surveyor" shall be under- Interpretation clause (c).

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(a) In H. Act, 1862, this Act is called "The Principal Act"—in H. Act, 1864, "Highway Act, 1835." It is usually referred to in this work by the latter title.

(b) This Act does not apply to the streets of the metropolis (sect. 112, *post*); nor to any turnpike roads, except where expressly mentioned: nor to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchways, or pavements, which now are or hereafter may be paved, repaired or cleansed, broken up or diverted, under any personal or local Act of Parliament (Id. s. 113); nor does it in any manner affect the rights of the universities (Id. s. 114), or the rights, &c., of the City of London (Id. s. 115), or the powers or authorities of the commissioners of sewers (Id. s. 116). As to highways in South Wales, see Part XI.

(c) See also interpretation clauses, H. Act, 1862, ss. 2, 3, 4; H. Act, 1864, s. 3, and H. Act, 1878, s. 38, which will be found in Part II.



Part I.

stood to mean surveyor of the highways, or waywarden; the word "parish" (a) shall be construed to include parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry, or any other place or district maintaining its own highways; and wherever anything in this Act is prescribed to be done by the inhabitants of any parish in vestry (b) assembled, the same shall be construed to extend to any meeting of inhabitants contributing to the highway rates in places where there shall be no vestry meeting, provided the same notice shall have been given of the said meeting as would be required by law for the assembling of a meeting in vestry; and that the word "highway" shall be understood to mean all roads, bridges (not being county bridges (c)), carriageways, cartways, horseways, bridleways, footways, causeways, churchways (d), and pavements; and that the word "justices" shall be understood to mean justices of the peace for the county, riding, division, shire, city, town, borough, liberty, or

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(a) See definitions of "parish" in H. Act, 1862, s. 3; and of "highway parish," and "poor law parish," H. Act, 1864, s. 3, and of "highway parish," H. Act, 1878, s. 38, Part II.

(b) Where a portion only of parish A. was under an Improvement Act, by which the repair of the highways was vested in commissioners, who were to be liable to indictment in case of non-repair; and it was sought under sect. 84 of H. Act, 1835, to divert a highway within such portion:—*Held*, that an assembly of inhabitants ought not to have been the vestry of A., but those persons who, under the Improvement Act, had to contribute to the rates in the district. *Wright v. Frant*, 32 L. J. M. C. 204. See sect. 113, H. Act, 1835, *post*, and *note*.

(c) A public bridge, repairable by immemorial custom by the inhabitants of a hundred, is not a highway within the meaning of the term highway in this section, and is not repairable, under that Act, by the parish in which it is situated. *R. v. The Inhab. of the Upper Half Hundred of Chart and Longbridge*, 39 L. J. M. C. 107.

(d) If the churchway be a highway, i.e., if it be common to all the subjects of the realm, and not merely to the parishioners, or to the inhabitants of a particular house, &c., it must be repaired as other highways are. 1 Vent. 208; 2 Raym. 1175; 3 Bac. Abr. 493. Cripps on *The Laws of the Church*, &c., 438.

Chap. XI.

place in which the highway may be situate, or in which the offence may be committed; and that the word "church" shall be understood to include chapel; and that the word "division" shall be understood to include limit; and that the word "owner" shall be understood to include occupier; and "inhabitant" to include any person rated to the highway rate; and the words "petty session" or "petty sessions" to mean the petty session or petty sessions held for the division or place; and wherever in this Act, in describing or referring to any person or party, animal, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include, and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several animals, matters, or things, as well as one animal, matter, or thing, respectively, unless there be something in the subject or context repugnant to such construction; and all the powers hereby given to, and notices, matters, and things required for, and duties, liabilities, and forfeitures imposed on surveyors, shall be applicable to all persons, bodies politic or corporate, liable to the repair of any highway.

VI. (f) And be it further enacted, that the inhabitants of every parish maintaining (g) its own highways, at their first meeting in vestry for the nomination of

Surveyor to  
be elected  
annually (e).

(e) When rural sanitary authority exercises the powers of a highway board under sect. 4 of H. Act, 1878, surveyors are not to be elected in any parish in the district.

(f) After the formation of a highway district under H. Act, 1862, no surveyor shall be appointed for any parish within such district. The outgoing surveyor of every parish within the district shall continue in office until 7 days after the appointment of the district surveyor by the highway board of the district, and no longer. H. Act, 1862, sub-sects. 1, 2.

By H. Act, 1862, s. 11, the highway board shall for all the purposes of the H. Act, 1835, except that of levying highway rates, be deemed to be the successor in office of the surveyor of every parish within the district.

(g) Extended to parishes not maintaining its own highways by H. Act, 1878, s. 25, Part II., Chap. 13.

## Part I.

May be  
re-elected.

overseers of the poor in every year (a), shall proceed to the election of one or more (b) persons to serve the office of surveyor in the said parish for the year then next ensuing (c) : provided always, that any outgoing surveyor shall continue to act until his successor shall be appointed, and shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding; and in such case notice of such election shall be given by the chairman to the person elected, and to the outgoing surveyor: provided always, that in any parish where there is no meeting in the year for the nomination of overseers of the poor, the inhabitants contributing to the highway rate (d) shall meet at their usual place of public meeting upon the 25th day of March, or if that should happen to be a Sunday or Good Friday, then on the day next following, or within 14 days next after the said 25th day of March in every year, to elect one or more persons to serve the office of surveyor for the said parish; which

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(a) *i.e.*, by 54 Geo. 3, c. 91, on the 25th March or within 14 days afterwards. The statute, however, is directory only, and an appointment made after the 14 days is good. *R. v. Sneyd*, 5 Jur. 962. See *R. v. Mayor of Norwich*, 1 B. & C. 310; *R. v. JJ. of Leicester*, 7 B. & C. 6. Though the election is directed to be made in vestry, this is subject to the common law right to demand a poll. And this was held to be the case even where certain proceedings were directed to be taken by a majority of two-thirds of those present at a vestry meeting. See sect. 18, *post*. *Ex p. Grossmith*, 10 L. J. Q. B. 359. *R. v. D'Oyly*, 12 A. & E. 139. *R. v. How*, 27 J. P. 773.

(b) Where more than one person is elected, each is a surveyor, and a demand of rate made by any one of them is sufficient. *Morrell v. Martin*, 3 M. & G. 581.

(c) Care must be taken that a sufficient notice has been given of the holding of the vestry at which the surveyor is elected, otherwise the election will be void. *R. v. Best*, 10 L. J. M. C. 102.

See the form of an appointment of a surveyor with a salary, Sched. to H. Act, 1835, No. 2, *post*; and see the form of the notice to the party of his being elected, Sched. No. 1.

(d) That is, occupying property liable to be assessed to the highway rate: it is not necessary that any one should have been actually rated. *R. v. Kershaw*, 26 L. J. M. C. 19.

surveyor shall repair and keep in repair the several highways in the said parish for which he is appointed, and which are now, or hereafter may become, liable to be repaired by the said parish (e). Chap. XI.

VII. And be it further enacted, that any person living within the parish, or any adjoining parish, and having an estate in houses, lands, tenements, or hereditaments lying within such parish, in his own right, or in right of his wife, of the value of ten pounds by the year, or a personal estate of the value of £100 (such person not living within the parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the parish or within any adjoining parish), of the yearly value of £20, shall be eligible to be elected a surveyor for the purposes of this Act: Provided nevertheless, that no person who is now exempted by law from serving the office of overseer of the poor (f) shall be compellable to serve the office of surveyor; provided also, that any person who may be chosen and elected to serve the said office of surveyor may provide a sufficient deputy, such deputy to be approved of by the justices at a special sessions (g) for the highways, who shall by writing under their hands testify their consent thereto.

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(e) Under sect. 105, *post*, there is an appeal against the appointment of a surveyor, as being a thing done in pursuance of the Act. *R. v. JJ. of St. Albans*, 3 B. & C. 698.

(f) The following persons are enumerated by Mr. Archbold as exempt from serving the office of overseer:—Peers and members of parliament, justices of the peace, aldermen of London, clergymen, dissenting ministers, practising barristers and solicitors, members of the college of physicians, or of surgeons, apothecaries, officers of the courts of law, officers of the army or navy, even on half-pay, officers of the customs and excise, and persons concerned in contracts to supply goods to the workhouse, or for the use of the poor. *Arch. Poor Law*, 13th ed., p. 78.

(g) As to the justices' jurisdiction at petty sessions see H. Act, 1864, s. 46, Part II., Chap. 13.

**Part I.**

Penalty on  
surveyor  
not acting  
when chosen.

VIII. And be it further enacted, that if any person who shall be so chosen and elected, and who is not exempt as aforesaid from serving the said office, shall refuse or neglect to take upon himself the office of surveyor, or to provide a sufficient deputy, to be approved of as aforesaid, he shall forfeit on conviction before any two justices any sum not exceeding £20, unless he can show to the said justices good and sufficient cause why he should not be called upon to serve the said office: provided also, that every deputy so provided and approved of shall have the same powers and authorities, and be subject to the discharge of the same duty, and be liable to the same penalties as any surveyor appointed under the authority of this Act.

Surveyor  
may be  
appointed  
with a  
salary.

IX. (a) And be it further enacted, that, instead of electing such surveyor as hereinbefore mentioned, it shall be lawful for the majority of the inhabitants so assembled as aforesaid in any parish for the election of surveyors as aforesaid to nominate and elect any one person of skill and experience to serve the said office of surveyor of such parish, and to fix such salary for the execution of such office as they shall think fit, which said appointment shall be in writing on paper without stamp, and signed by the chairman of such meeting; and such surveyor, when so appointed, shall be invested with the same powers, and subject to the same duties, forfeitures, and penalties, as any surveyor appointed under the authority of this Act would have been; and such salary shall be paid out of the money raised under the authority of this Act, at such times and in such manner as shall have been agreed upon between the inhabitants so assembled as aforesaid and the person so nominated and elected as aforesaid: provided nevertheless, that if such surveyor shall cease to act, and be

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(a) This section does not apply to any parish within a district formed under H. Act, 1862. See sect. 42 of that Act.

dismissed in the manner hereinafter described, such **Chap. XI.** salary shall also in like manner cease and determine.

X. (b) And be it further enacted, that the surveyor or Surveyor, on surveyors, at the time of passing his or their accounts (c) verifying his as herein mentioned, shall deliver to the justices a name his statement in writing of the name and residence of the successor. person appointed to succeed him or them as surveyor or surveyors.

XI. And be it further enacted, that in case it shall appear on oath to the justices at a special sessions (d) justices in for the highways that the inhabitants of any (e) parish certain cases have neglected or refused to nominate and elect a surveyor or surveyors in manner and for the purposes aforesaid, or that the outgoing surveyor, except he had been to appoint a directed by the inhabitants so to do, has delivered no statement of the name and residence of his or their surveyor. successor or successors, or that the surveyor is dead, or has ceased to possess the qualification, or is or has become disqualified in any manner herein mentioned, or that he has neglected to act, or refused to carry into operation the duties imposed upon him by this Act, it shall and may be lawful for such justices, and they are hereby authorized and required, by writing under their hands, at their next succeeding special sessions for the highways (f), to dismiss such surveyor so neglecting to act, or refusing to carry into operation the duties imposed upon him by this Act, and to appoint

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(b) This section does not apply to any parish within a district formed under H. Act, 1862. See sect. 42, sub-sect. 3, of that Act.

(c) See *R. v. JJ. of W. R. Yorkshire*, 1 Q. B. 624; 10 L. J. M. C. 137.

(d) As to their present jurisdiction in petty sessions, see H. Act, 1864, s. 46, Part II., Chap. 13.

(e) See H. Act, 1878, s. 25.

(f) When at a special sessions for the highways, it was made to appear to the justices on oath that an election of surveyors by the vestry was void, inasmuch as only two days' notice had been

**Part I.**

any person whom they may think fit to be a surveyor for such parish till the annual meeting then next ensuing for the nomination of overseers or for the election of surveyors as aforesaid, and with or without such salary, as to the said justices shall seem fit and proper; and the said surveyor when so appointed shall be invested with the same powers, and be subject to the same duties, forfeitures, and penalties as any surveyor elected by the inhabitants of any parish as aforesaid would have been (a).

When parish  
is situate in  
more than  
one county.

XII. And be it further enacted, that when a parish is situated in more than one county, division, or liberty, the surveyor so to be appointed as last aforesaid shall be appointed by the justices at a special sessions (b) for the highways assembled in that county, division, or liberty in which the church of the said parish shall be situate.

Parishes  
may direct  
application  
to be made  
to justices at  
sessions for

XIII. (c) And whereas it is expedient that in many cases parishes should be formed into districts for the purpose of having one sufficient person to be the district surveyor, who should have the superintendence

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given of the holding of the vestry,—the justices then proceeded to appoint two persons as surveyors of the highways under this section: the Court of Queen's Bench, although they held the election by the vestry to be void, for the reason given, held the appointment by the justices to be also void, as it was made at the same sessions at which they were informed of the defective election by the vestry, instead of at "the next succeeding special sessions for the highways," as directed by this section. *R. v. Best*, 16 Law J. M. C. 102. See *R. v. Denbighshire*, 4 East, 142. *R. v. Leicester JJ.*, 7 B. & C. 6. *R. v. Mayor of Norwich*, 1 B. & Ad. 310. See H. Act, 1878, s. 25, Part II., Chap. 14.

(a) See the form of an appointment of a surveyor by justices, Sched. to H. Act, 1835, No. 3, *post*.

(b) As to their present jurisdiction in petty sessions, see H. Act, 1864, s. 46, *post*, Part II., Chap. 13.

(c) By H. Act, 1862, s. 42, sub-sect. 4, this section is not to apply to any parish within a district formed under that Act.

and management of the funds to be raised and levied **Chap. XI.**  
 under the provisions of this Act in each parish forming <sup>forming</sup>  
 part of such district: be it therefore enacted, that it <sup>them into</sup>  
 shall and may be lawful for the inhabitants of any <sup>districts.</sup>  
 parish in vestry assembled, if they shall think fit, to  
 empower and direct one of the churchwardens of such  
 parish, or the chairman of the said vestry, to make  
 application to the justices assembled at the quarter  
 sessions for the county, or, where the parishes to be  
 united shall be situated in the same division, at some  
 special sessions for the division in which such parish  
 shall be situate, for the purpose of being united with  
 one or more parishes to form a district for the pur-  
 poses aforesaid, and at the same time to nominate one  
 fit and proper person to be returned to the said justices  
 to be appointed as such district surveyor, together with  
 the amount of the yearly salary which the said inha-  
 bitants in such vestry assembled shall agree to pay to  
 such district surveyor; which application, with the name  
 of such last-mentioned person, shall be forthwith made  
 in writing, signed by the churchwardens of the said  
 parish, or by the chairman of the said vestry as afore-  
 said, and forwarded to the clerk of the peace in and for  
 the said county, or to the clerk of the justices in and  
 for the said division, as the case may be, who shall lay  
 the same before the justices at the quarter sessions then  
 next holden in and for the said county, or at the special  
 sessions as aforesaid.

XIV. (d) And be it further enacted, that on such <sup>Justices at</sup>  
 application as aforesaid being made by two or more <sup>sessions may</sup>  
 parishes to the said justices, they are hereby authorized, <sup>unite such</sup>  
 at the said quarter sessions or at some special sessions <sup>parishes into</sup>  
 as aforesaid to take the same into their consideration, <sup>districts,</sup>  
 and select <sup>and appoint</sup>

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(d) Not to apply to any district formed under II. Act, 1862.  
 See sect. 42, sub-sect. 4 of that Act.



**Part I.**  
a district  
surveyor.

and to unite such and so many of the parishes so applying as aforesaid, as they shall think fit, into a district or districts for the purposes of this Act; and the said justices shall select and appoint out of the persons so nominated as aforesaid by the several parishes so united into one district one fit and competent person to be the surveyor for such district composed as aforesaid, which appointment shall be in writing.

Names of  
parishes  
and of district  
surveyor to be  
recorded,  
and a copy  
thereof sent  
to each  
churchwarden,  
&c.

XV. (a) And be it further enacted, that the names of the said parishes so united, and the name of the person so appointed as district surveyor, shall be reduced into writing, signed by the chairman of the said quarter sessions, or by the majority of the magistrates present at such special sessions, and shall be transmitted by him or them to the clerk of the peace, who shall lay the same before the justices assembled at the quarter sessions in and for the said county, or at some adjournment thereof, who are hereby authorized and required to cause the same to be enrolled with the records of the court; and a copy thereof shall be sent by such clerk of the peace to each of the churchwardens or the surveyor of each of the said parishes so united; and such parishes so united shall continue to form a district for the purposes of this Act for the space of 3 years then next following, and from thenceforward until the churchwarden of any one of the said parishes so united, or the chairman of the vestry, shall, by direction and in pursuance of a resolution of the inhabitants in vestry assembled, give 12 months' notice to the churchwardens and surveyor of each of the other parishes, and to the said district surveyor appointed by the said justices, and to the clerk of the peace of the county in which the said parishes are situate, of the intention of the said parish to cease to

Parishes  
when united  
to form a  
district for  
3 years,  
and until  
12 months  
after any one  
parish shall  
give notice  
of intention  
to cease to  
form one of  
said district.

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(a) Not to apply to any district formed under H. Act, 1862. See sect. 42, sub-sect. 4, of that Act.

form a part of the said district; in which case, from **Chap. XI.**  
 and after the expiration of the said 12 months' notice,  
 the union of the said parishes into such district as  
 aforesaid, and the appointment of the said district sur-  
 veyor, shall cease and determine, so far as may concern  
 or be binding on the said parish so giving such notice  
 as aforesaid.

XVI (b). And be it further enacted, that such district District sur-  
veyor to have  
power, &c. of  
surveyor,  
except in  
levying rate.  
 surveyor, when so appointed, shall, for all the purposes  
 of this Act, except the making, assessing, and levying  
 the rate in and by this Act authorized to be made, except in  
levying rate.  
 assessed, and levied, have as far as the same are applic-  
 able, the same powers, and be subject and liable to the  
 same duties, penalties, and forfeitures, as any surveyor  
 elected under the provisions of this Act is invested  
 with and liable to, and shall have the laying out and  
 application of all the funds raised and levied under the  
 authority of this Act: Provided nevertheless, that such  
 district surveyor shall not expend any monies levied in  
 any one of the said united parishes except for the use  
 and benefit of the parish in which it is so levied, unless  
 with the consent of the inhabitants of such parish in  
 vestry assembled, for the purpose of carrying on repairs  
 or beneficial improvements under the provisions of this  
 Act, for the common benefit of the said united parishes; Salary of dis-  
trict surveyor,  
how to be  
paid.  
 and such district surveyor shall annually receive from  
 each of the parishes composing his district respectively  
 such salary as shall have been agreed upon by the  
 several parishes in manner aforesaid, which salary shall  
 be paid to such district surveyor by the surveyor of the  
 highways, out of the money raised in each of such  
 parishes under the authority of this Act; and in case  
 of non-payment thereof, the same shall be recoverable  
 from the surveyors of the highways of such parishes, to

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(b) Not to apply to any district formed under H. Act, 1862. See  
 sect. 42, sub-sect. 4, of that Act.

**Part I.** and for his own use, in the same manner as any forfeiture is recoverable under this Act.

When parishes are united, a surveyor to be appointed to make rate, &c.

**XVII. (a)** And be it further enacted, that in each of the parishes so united into a district as aforesaid a surveyor shall be elected, as herein mentioned, in addition to the district surveyor so appointed as aforesaid: Provided nevertheless, that such surveyor shall only be authorized and required to make, assess, and levy the rate herein directed to be made, assessed, and levied, and from time to time pay over the money arising therefrom to such district surveyor.

Appointment of a board directing repairs in large parishes.

**XVIII. (a)** And whereas it is expedient in large and populous parishes that the repairs of the highways should be under the direction and control of a certain number of inhabitants, to be chosen and appointed as a board for that purpose, with necessary powers: be it therefore further enacted, that in any parish (b) where the population by the then last census, taken from the returns made to parliament, exceeds the number of 5000, if it shall be determined by a majority of two-thirds of the votes of the vestrymen present at such meeting (c) as aforesaid, to form a board for the superintendence of the highways of the said parish, and for the purpose of carrying the provisions of this Act into effect, it shall be lawful for the said vestry to nominate

(a) Not to apply to any district formed under H. Act, 1862. See sect. 42, sub-sect. 4, of that Act.

(b) This section extends only to parishes that without subdivision repair their own highways. If a parish be divided into townships or tithings, each of which separately maintains the highways within it, the parish cannot form a board for the maintenance of the highways within the different townships or tithings, even although they propose to rate each township or tithing separately. *R. v. Bush*, 9 Ad. & El. 820; 8 L. J. M. C. 39.

(c) The words "present at such meeting" do not take away the common law right to demand a poll; and therefore where two-thirds of the vestrymen present at a meeting were in favour of appointing a highway board, but a poll was demanded and refused, the appointment of a board was held void. *R. v. How*, 27 J. P. 773, 33 L. J. M. C. 33.

Chap. XI.

and elect any number of persons, not exceeding 20 nor less than 5, being respectively householders, and residing in and assessed to the rate for the relief of the poor of the said parish, and also liable to be rated to the repair of the highways in the said parish, under and by virtue of this Act, to serve the office of surveyors of the highways for the year ensuing; and such persons so to be nominated and elected as such surveyors, or any three of them, shall and are hereby authorized to act as a board, and to be called "The Board for Repair of the Highways in the Parish of—," (as the case may be), and to carry into effect the powers, authorities, and directions in this Act contained; and such board are hereby authorized to appoint a collector, or any number of collectors, of the rates to be made under the authority of this Act, and also to employ a person of skill and experience to act as an assistant surveyor (*d*) to the said board, and also a clerk to attend the said board, and to keep the accounts and minutes of the proceedings thereof; such assistant surveyor and clerk to be paid such reasonable salaries out of the said rates as the said board shall determine; and upon such board being so nominated and elected as aforesaid, all and every the powers and authorities given and created by this Act, and granted to or vested in the vestry, and in any person or persons as surveyor, shall, for the purposes of the parish so nominating and electing such board, be and the same are hereby declared to be vested in the said persons so to be elected, or any 3 of them, acting as such board as aforesaid; and such persons or any three of them, at a meeting to be convened for that purpose, may and they are hereby authorized to nominate and appoint a fit and proper person to be treasurer for the deposit of the monies to be collected for the purposes of this Act, and to take

Powers of the  
board.

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(*d*) The assistant surveyor has no duty thrown upon him of keeping accounts. *Adams v. Lakeman*, 27 L. J. M. C. 307; E. B. & E. 615.

**Part I.** from such person good and sufficient security (a) for the monies to be deposited in his hands as aforesaid; and all monies to be drawn from such treasurer for the purposes of this Act shall be drawn by drafts or cheques to be signed by the said persons so to be nominated and elected as aforesaid, or any 3 of them, at some one of their meetings to be held under this Act, and such drafts shall be respectively signed and entered in their books by the said clerk to be appointed as aforesaid : provided always, and it is hereby declared, that upon the expiration of the year for which such board shall be elected as aforesaid, and before or on the day for the nomination and election of persons as surveyors under the authority of this Act the said board shall and are hereby directed to present to the vestry of the parish for which they shall have acted copies of all their accounts and also of the minutes of their proceedings during the preceding year.

Board may  
hire or pur-  
chase pre-  
mises.

XIX. (b) And be it further enacted, that it shall and may be lawful to and for such board to rent, or, with the consent of the vestry of any parish, to purchase, a fit and convenient piece of ground or other premises for the keeping of the implements and materials necessary for the reparation of the highways, or for the preparing the materials for the same respectively, and to determine and direct how and in what manner the highways in the said parish, or any or either of them, or any and what part or parts thereof, shall be curbed or paved with stone or otherwise.

Penalty on  
surveyor, &c.

XX. (c) And be it further enacted, that if any surveyor or district surveyor or assistant surveyor shall

(a) The giving security is not, it would seem, a condition precedent either to the enjoyment of the office, or to the liability to account for the monies received by the treasurer. *R. v. Patteson*, 4 B. & Ad. 9.

(b) Not to apply to any district formed under H. Act, 1862. See sect. 42, sub-sect. 4, of that Act.

(c) *Ib.* sub-sect. 5. If a surveyor be guilty of embezzlement, he may be indicted, instead of proceeding under this section. *R. v.*

neglect his duty in anything required of him by this **Chap. XI.**  
 Act, for which no particular penalty is imposed, he shall forfeit for every such offence any sum not exceeding £5. for neglect of duty.

XXI. And be it further enacted, that if any bridge shall hereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge, shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law before the erection of the said bridge bound to repair the said highways: Provided nevertheless, that nothing herein contained shall extend or be construed to extend to exonerate or discharge any county or any part of any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge, or the land arches thereof. As to repair of highways adjoining bridges hereafter to be built (d).  
 Raised causeways, &c.

XXII. And be it further enacted, that the several powers and authorities hereby (e) vested in the surveyor of highways, as well for the getting of materials as the preventing and removing of all nuisances and annoyances, shall be and the same are hereby vested in the surveyor of county bridges, and the roads at the ends thereof repairable therewith; and the several penalties, forfeitures, matters, and things in this Act contained relating to highways shall be and the same are hereby Powers for getting materials and preventing nuisance extend to county bridges and roads at the ends thereof.

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*Anderson*, 3 Burn's J., 29th ed., Highways, 537. See *Morgan v. Leach*, 10 M. & W. 558; and sects. 40, 42, 46, 55, &c., *post*. He is not personally liable in an action for injuries sustained in consequence of the foundrous state of the highway. *Mackinnon v. Penson*, 6 Exch. 819. *Young v. Davies*, 7 H. & N. 760; 2 H. & C. 197. See *Hartnell v. Ryde Com.*, 27 J. P. 599. *Davis v. Ourling*, 15 L. J. 56, Q. B. *Gray v. Pulling*, 29 J. P. 69, *ante* p. 15.

(d) See *ante*, p. 36.

(e) See sects. 46, 51, 53, 54, *post*, pp. 102—108. Such materials are exempt from turnpike toll. 3 Geo. 4, c. 126, s. 32.

**Part I.**

extended and applied, as far as the same are applicable, to such bridges, and the roads at the ends thereof as aforesaid, the said surveyor or surveyors of county bridges making satisfaction and compensation for all trespass and damage done in the execution of the powers of this Act, in such and the same manner as the surveyors of highways are required to make under the provisions of this Act.

When new highways are to be kept in repair by parishes (a).

XXIII. And be it further enacted, that no road or occupation way made or hereafter to be made by and at the expense of any individual or private person, body politic or corporate, nor any road already set out or to be hereafter set out as a private driftway or horsepath in any award of commissioners under an Inclosure Act, shall be deemed or taken to be a highway which the inhabitants of any parish shall be compellable or liable to repair (b), unless the person, body politic or corporate, proposing to dedicate such highway to the use of the public, shall give 3 calendar months previous notice in writing (c) to the surveyor of the parish of his intention to dedicate such highway to the use of the public, describing its situation and extent, and shall have made

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(a) This section is not retrospective in respect of roads which had become completely public by dedication at the passing of this Act (viz. 1835), it applies to roads at that time made, and in progress of dedication. *R. v. Westmark*, 2 Moo. & R. 305.

A road may still become a public highway, by dedication, express or presumed, notwithstanding this section. The only effect of it is to prevent the parish from becoming liable to its repair, unless the requisites of the section are complied with. *Roberts v. Hunt*, 15 Q. B. 17. See *Barnes v. Ward*, 2 C. & K. 661. *R. v. Dukinfield*, 32 L. J. M. C. 230.

And where it is within a highway district under H. Act, 1862, notice must be given to the highway board, as exercising the powers of the parish surveyor (sect. 11) in the manner directed by sect 42, sub-sect. 6 of that Act.

There is in the same Act, sect. 36, a provision for the adoption by a parish of any driftway, private carriage, or occupation road, which see Part II., Chap. 12.

(b) See *ante*, p. 27.

(c) See the form of this certificate, Schedule to H. Act, 1835, No. 6, *post*,

or shall make the same in a substantial manner, and of the width required by this Act, and to the satisfaction of the said surveyor, and of any two justices of the peace of the division in which such highway is situate, in petty sessions assembled, who are hereby required, on receiving notice from such person, or body politic or corporate, to view the same, and to certify (*d*) that such highway has been made in a substantial manner, and of the width required by this Act, at the expense of the party requiring such view, which certificate shall be enrolled (*e*) at the quarter session holden next after the granting thereof, then and in such case, after the said highway shall have been used by the public and duly repaired and kept in repair, by the said person, body politic or corporate, for the space of 12 calendar months, such highway shall for ever thereafter be kept in repair by the parish in which it is situate: Provided, nevertheless, that on receipt of such notice as aforesaid the surveyor of the said parish shall (*f*) call a vestry meeting of the

Chap. XI.

Proviso, as to  
determining  
utility of  
highway.

(*d*) See the form of this certificate, Sched. to this Act, No. 7, *post*.

(*e*) The want of enrolment would not, it seems, vitiate the certificate, such enrolment being a ministerial act. *De Ponthieu v. Pennyfeather*, 5 Taunt. 634.

(*f*) Under this section, where a person is about to dedicate a new road to the public, and seeks to make it repairable by the parish, and gives notice to the surveyor that, at the end of 3 months, it will be dedicated, it is the duty of the surveyor to call a vestry meeting of the inhabitants of the parish, and if such meeting decides that the road is not of sufficient utility to justify its being kept in repair at the expense of the parish, it is his further duty to summon the party proposing to dedicate before the justices at the next special sessions for highways, who are to decide on the question of the utility of the road, but if the surveyor omits to summon the party, at the next special sessions after such vestry meeting, the parish is not liable to repair the road, and a *mandamus* will not lie to the justices after such special sessions have been passed over, and after the 3 months mentioned in the notice have expired to view and certify that the road has been substantially made. *Semble*, a *mandamus* would lie to the surveyor to summon the vestry or the party before the special sessions, and *semble*, per BLACKBURN, J., after the 3 months had expired. *R. v. Bugge*, 44 L. J. M. C. 45. As to justices' present jurisdiction at petty sessions see H. Act, 1864, s. 46, *post*.



**Part I.** inhabitants of such parish, and if such vestry shall deem such highway not to be of sufficient utility to the inhabitants of the said parish to justify its being kept in repair at the expense of the said parish, any one justice of the peace, on the application of the said surveyor, shall summon the party proposing to make the new highway to appear before the justices at the next special sessions for the highways to be held in and for the division in which the said intended highway shall be situate; and the question as to the utility as aforesaid of such highway shall be determined at the discretion of such justices (a).

Direction  
posts, where  
and how to be  
erected.

XXIV. And be it further enacted, that the surveyor of every parish other than a parish the whole or part of which is within 3 miles of the General Post Office in the City of London, shall, with the consent of the inhabitants of any parish in vestry assembled, or by the direction of the justices at a special sessions for the highways, cause (where there are no such stones or posts) to be erected or fixed in the most convenient place where 2 or more ways meet, a stone or post, with inscriptions thereon in large legible letters, not less than one inch in height, and of a proper and proportionate breadth, containing the name of the next market town, village, or other place to which the said highways respectively lead, as well as stones or posts to mark the boundaries of the highway, containing the name of the parish wherein situate; and that the surveyor of every parish shall, at the several approaches or entrances to such parts of any highways as are subject to deep or dangerous floods, cause to be erected graduated stones or posts as he shall judge to be necessary, for the guiding of travellers in the best and safest track through

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(a) There is, however, under sect. 105, an appeal to quarter sessions against the decision of the justices. *R. v. JJ. of Derbyshire*, 27 L. J. M. C. 189,

the floods; and also to secure horse causeways and foot causeways (b), by posts, blocks, or stones fixed in the ground, or by banks of earth cast up or otherwise, from being passed over and spoiled by waggons, wains, carts, or carriages; and the said surveyor shall be reimbursed, out of the monies which shall be received by him pursuant to the directions of this Act, the expenses of providing and erecting and of keeping in repair such stones, posts, or blocks already erected or fixed, or which may hereafter be erected or fixed.

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XXV. And be it further enacted, that it shall be lawful for the surveyor to make a road through the grounds adjoining to any ruinous or narrow part of any highway (not being the site or ground whereon any house stands, nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house, or inclosed ground set apart for building ground or as a nursery for trees,) to be made use of as a public highway whilst the old road is repairing or widening, making such recompense to the proprietor and occupier of such grounds for the damages they may thereby sustain as the justices at a special sessions (c) for the highways assembled may think reasonable, such sum so awarded as a recompense to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act.

XXVI. And be it further enacted, that if any impediment or obstruction shall arise in any highways from accumulation of snow, or from the falling down of the banks on the side of such highways, or from any other

Power to use adjoining ground as a temporary road.

Surveyor to remove snow, &c.

(b) These words apply only to such causeways as are by the side of carriageways; and, therefore, the surveyor is not bound to protect horse and foot causeways against carriages at the extremities of such ways. *Ellis v. Woodbridge*, 29 L. J. M. C. 183; 8 C. B. (N. S.) 290.

(c) As to justices now having jurisdiction at petty sessions, see H. Act, 1864, s. 46, *post*, Part II., Chap. 12.

**Part I.** cause, the surveyor is required from time to time, and within 24 hours after notice (a) thereof from any justice of the peace of the county in which the parish may be situate, to cause the same to be removed.

**Surveyor to make rate (b).** XXVII. And in order to raise money for carrying the several purposes of this Act into execution, be it further enacted, that a rate shall be made, assessed, and levied by the surveyor upon all property now liable (c) to be rated and assessed to the relief of the poor: provided that the same rate shall also extend to such woods, mines, and quarries of stone (d), or other hereditaments, as have heretofore been usually rated to the highways (e); and provided also, that

**Rate to be allowed by justices.**

(a) See the form of this notice, Sched. to this Act, No. 8, *post*.

(b) Where a highway district has been formed under H. Act, 1862, the expenses of the highway board are to be charged and raised as mentioned in H. Act, 1864, ss. 32—34: see *ante*, p. 45.

(c) An occupier of land forming part of a highway district who claims exemption from the highway rates must show that there is some consideration for such exemption, and it is not sufficient to show that none of the owners of the land or the occupiers thereof have ever paid the highway rates, or done statute work, or paid composition in lieu of highway rates.—*LUSH, J., dissentiente. R. v. Rollitt*, 44 L. J. M. C. 190, L. R. 10, Q. B. 475, *ante*, p. 30.

(d) See now as to woods and mines being rated to the poor rates 37 & 38 Vict. c. 54.

(e) It was held in one case that these words “usually rated” mean merely such woods, &c., as had usually been actually rated in the particular parish; and therefore upon an appeal against a highway rate, it was holden that the sessions were right in inquiring whether certain woods were usually rated, in point of fact, at the time of the passing of the statute, and not whether such woods were rateable, or whether they were usually rated in other parishes. *R. v. Rose*, 6 Q. B. 153; 13 L. J. M. C. 155. But in a more recent case, the like question arose as to the rating of an underground stone quarry, which was worked in the same manner as a mine; it did not exist at the time the Act passed, but at that time other quarries worked in the same manner were usually rated to the highway rate: *WIGHTMAN, J.*, held that the above proviso was not limited to the identical mines before actually rated, but applied to mines of the same class and description as those usually rated in the parish before the Act passed, though opened and worked for the first time since the passing of the Act. *R. v. Saunders*, 24 L. J. M. C. 57. *R. v. Ellis*, 12 L. J. M. C. 20. As to tithe rentcharge, see *R. v. JJ. of Sussex*,

every such rate shall be signed by the said surveyor, Chap. XI. and allowed by 2 justices of the peace (*f*), and published, in the same way as poor rates are now allowed and published.

XXVIII. And in order to enable the surveyor to form a proper judgment of any rate to be made in pursuance of this Act, be it further enacted, that it shall be lawful for the surveyor, and he is hereby authorized and empowered, at all reasonable times (*g*), to inspect, or by writing signed by him to grant authority to any person appointed by him to inspect, any of the rates made towards the relief of the poor of the parish of which he is surveyor, or the books wherein the assessments thereto shall be entered, without fee or reward; and the surveyor, or person by him authorized as aforesaid, shall be allowed to make a copy of such rate or books, or to take any extracts therefrom; and if any person in whose custody or power any of the said rates or books shall be, shall, when thereunto required in manner aforesaid, refuse or neglect to produce the same to the surveyor, or person

Surveyor may inspect rate book, and obtain copies or extracts.

3 Nev. & M. 263; *Chanter v. Glubb*, 9 B. & C. 479; *R. v. J.J. of Bucks*, 1 B. & C. 485; *R. v. Lacy*, 5 B. & C. 702. Where a local Act for the improvement of a portion of a parish provided that any person assessed under that Act for any lands or tenements within the limits of the Act, should be released from all rates towards the *paving and lighting* any other street, road, &c., within the parish, in respect of other lands or tenements; it was held that this did not exempt an occupier of premises assessed within the local district from being assessed in a general highway rate imposed on the parish, although parts of such rate might be expended in *paving* parts of the parish out of the district. *Richardson v. Tubbs*, 4 C. B. 304.

(*f*) Where two justices by inadvertence wrote their allowance at the foot of a page in the middle of the rate, instead of at the end of it,—“We do hereby consent to and allow the foregoing rate and assessment,”—the Court of Queen’s Bench held that this was no allowance of the latter part of the rate, and that payment of an assessment in the latter part could not be enforced by distress. *Re J.J. of North Staffordshire*, 23 L. J. M. C. 17.

(*g*) See *Spencely v. Robinson*, 3 B. & C. 658; *Bennett v. Edwards* 7 B. & C. 586.

**Part I.**

so by him authorized as aforesaid, as the case may be, or to allow such copy or extract to be made or taken, at all reasonable hours in the daytime, he shall for every such offence forfeit and pay any sum not exceeding £5.

Form and  
amount of  
rate.

XXIX. And be it further enacted, that every rate shall contain the names of the occupiers, the description of the premises or property they occupy, and the full annual value of such premises or property, and shall also specify the sum in the pound at which it is made (a); and no rate to be levied or assessed as aforesaid shall exceed at any one time (b) the sum of 10*d.* in the pound, or the sum of 2*s.* 6*d.* in the pound in the whole in any one year: provided nevertheless, that, with the consent of four-fifths of the inhabitants of any parish contributing to the highway rate assembled at a meeting specially called for that purpose, 10 days previous notice of the same having been given by the surveyor of the said parish, the rate to be levied and assessed as aforesaid may be increased to such sum as the said inhabitants so assembled may think proper (c).

Surveyor to  
have power  
to enforce  
composition  
in certain  
parishes.

XXX. Provided always, and be it further enacted, that, in parishes in which the overseers of the poor have power by local Acts of Parliament to compound with or require composition for poor rates, from the landlords of certain houses, tenements, or hereditaments, and in case of their refusal to compound, to rate such landlords as the occupiers, the surveyors shall have the same powers, remedies, and privileges to compound and enforce composition, and, in case of refusal

(a) See the form of the rate, Sched. to this Act, No. 4, *post*.

(b) *Concurrent* rates cannot be made for the same period of time. *R. v. Fordham*, 11 A. & E. 73.

(c) A similar provision is contained in H. Act, 1864, s. 35. See *Morell v. Harvey*, 4 A. & E. 684.

by the landlords, to assess them in the same proportions to the rates authorized to be made by this Act, as the overseers of the poor have by such Acts for assessing and recovering any rate made for the relief of the poor, or the compositions entered into for the same.

Chap. XI.

XXXI. And be it further enacted, that whenever it shall appear to the said surveyor as aforesaid that there has been any omission or error in any rate or assessment made in pursuance of this Act of or in the name of any person, parson, or vicar, or of any house, shop, warehouse, coach-house, stable, cellar, vault, building, workshop, manufactory, garden ground, land, tenement, wood, tithe, mines, pits, or quarries of any mineral, stone, or other matter whatsoever, or hereditament liable to be rated for the purposes of this Act, it shall be lawful for the said surveyor as aforesaid, with the consent and approbation of the justices at a special sessions for the highways, to cause to be added or corrected in the said rate or assessment the name of the person, parson, or vicar omitted, or erroneously stated, and a description of the property in respect of which he ought to be rated; and every such addition or correction made in any of the said rates, and signed by such justices, shall be as valid and effectual as if the same had been part of the original rate at the time when it was first made.

Errors in rates may be rectified.

XXXII. And be it further enacted, that it shall and may be lawful for the justices at a special sessions (d) for the highways, on application made to them by any person rated to any rate under the authority of this Act to be discharged therefrom, on proof of his inability through poverty to pay such rate, the surveyor having

Persons may be excused by justices from payment of highway rate.

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(d) As to their present jurisdiction in petty sessions see H. Act, 1864, s. 46, *post*.

**Part I.**

been first summoned to appear on the part of the parish, to order and direct that such person shall be excused from the payment of such rate, and which order of the said justices is hereby declared to be final with respect to such rate.

Certain persons not liable to payment of highway rate.

XXXIII. And be it further enacted, that when property, or the owner or occupier in respect thereof, has, previous to the passing of this Act (a), been legally exempt from the performance of statute duty, or from the payment of any composition in lieu thereof, or of highway rate, the said property and the owners and occupiers thereof shall be exempt from the payment of the rate hereby imposed.

Rates to be recovered.

XXXIV. And be it further enacted, that, for levying and recovering the said rate by this Act authorized to be made, the surveyor shall have the same powers, remedies, and privileges as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor (b).

Ratepayers may divide among them.

XXXV. (c) And be it further enacted, that it shall be lawful for 2 ratepayers of any parish, within 6

(a) Where the occupiers of certain lands in a hamlet had been, previous to the passing of the H. Act, 1835, exempt from liability to contribute to the repair of highways, and after the passing of H. Act, 1862, the hamlet was with other places combined into a highway district, and a precept was issued to the overseers of the township in which this hamlet was situate to contribute out of the poor rates a certain sum for the repair of the highways of the township, including the hamlet: held, that as by sect. 42 of H. Act, 1862, the former Act was to be construed with that Act, the occupiers of the lands were exempt from contributing to the poor rates as to so much as they were assessed in respect of the repair of the highways: and that as the rate assessed upon each occupier in the township was 1s. in the pound, of which 4d. was the rate for the repair of the highways, the occupiers of the lands in question were liable to a rate of 8d. only. *R. v. Heath*, 35 L. J. M. C. 113; and see *Freeman v. Read*, 32 L. J. M. C. 226, *ante*, p. 30.

(b) See *Archbold's Poor Law* (13th ed.), p. 1007, and 12 Vict. c. 14 (*post*, Part IV.), under which the costs of distraining for highway rates may be recovered.

(c) This section is not to apply to any parish within a highway district. H. Act, 1862, s. 42, sub-sect. 7.

days next after the annual appointment of the surveyor, **Chap. XI.**  
 by a notice in writing, to require the said surveyor to <sup>perform the</sup> call a meeting of the ratepayers of the said parish, for <sup>conveyance of</sup> the purpose hereafter mentioned, and the said surveyor <sup>stone, &c.,</sup> shall call such meeting within 8 days after the receipt <sup>for repairs of</sup> of such notice, and shall give 6 days' previous intima- <sup>highways,</sup> tion of such meeting; and if at such meeting a majority <sup>which shall be</sup> of the ratepayers then and there assembled shall signify <sup>paid for by</sup> their consent thereto, it shall and may be lawful for <sup>the surveyor.</sup> the ratepayers keeping a team or teams of 2 or more horses or beasts of draught to divide among themselves, in proportion to the amount of rate to which they may respectively be assessed, the carrying of the material which may be required by the said surveyor for the repairs of the highways within such parish, and that they shall be paid by the said surveyor for such carrying or task-work, within one calendar month after having performed such service, after such rate per cubic yard of material per mile, and so in proportion for any less distance than a mile, as shall be fixed by the justices at their first meeting in special sessions (d) for the highways after the 25th day of March in every year (e), which rate the said justices are hereby required to fix at such special sessions: provided always, that such carrying or task-work shall be performed at such times and places and in such manner as the said surveyor may direct (the periods of spring, seed-time, and harvest always excepted); and that in case the said surveyor shall not approve of the manner in which such carrying or task-work shall be performed, it shall be lawful for the justices at a special sessions for the highways to hear the complaint of such surveyor in that respect, and to award such pecuniary redress or forfeiture against the party offending as to them shall appear reasonable.

(d) As to their present jurisdiction in petty sessions see II. Act, 1864, s. 46, *post*.

(e) This provision as to the time is directory only. *R. v. JJ. of Leicestershire*, 7 B. & C. 6.



**Part I.**

Surveyor,  
with consent  
of vestry,  
may appoint  
collector of  
rates.

XXXVI. And be it further enacted, that the surveyor of any parish, the consent of the majority of the inhabitants in vestry assembled being first had and obtained, may from time to time appoint (a) any number of collectors of the said rates, and may remove any such collector, and appoint another in his stead, and make such allowance to such collector, out of the monies to be received under this Act, as the said inhabitants in vestry assembled shall think reasonable; and the said collector is hereby declared to have all the same powers, remedies, and privileges for the levying and enforcing the payment of such rates as the surveyor nominated or appointed under the authority of this Act.

Security to  
be taken from  
collector (c).

XXXVII. And be it further enacted, that it shall be lawful for the said surveyor and he is hereby required to take security from every collector appointed by virtue of this Act, for the due execution of his office as collector, which security shall be to the full amount of the sum likely to be in the hands of the said collector at any one time, and shall be by bond without stamp.

Collector to  
make out  
accounts of  
all monies  
received  
under this  
Act, &c.

XXXVIII. And be it further enacted, that every collector appointed by virtue of this Act, shall, under his hand, and at such time and in such manner as the surveyor may direct, deliver to the said surveyor as aforesaid true and perfect accounts in writing of all monies which shall have been by such collector received by virtue of this Act, and also a list of the names of all such persons as shall have neglected or refused to pay their respective rates, and of the monies due from them respectively; and that every such collector shall pay all such monies as shall remain due from him to the said

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(b) If the appointment be in writing, which is not necessary, it will require a stamp. See *R. v. Lew*, 8 B. & C. 655.

(c) It would seem that the appointment may be complete, although the security has not been given. *R. v. Patteson*, 4 B. & Ad. 9.

surveyor as aforesaid; and if any such collector shall refuse or neglect to make and render such account, or to produce and deliver up the list of persons neglecting and refusing to pay their rates as aforesaid, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said surveyor as aforesaid, or to such person as he shall appoint to receive the same, within three days after being thereunto required by the said surveyor as aforesaid, by notice in writing under his hand given to or left at the usual place of abode of such collector, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said surveyor as aforesaid respecting the same, then and in every such case, upon complaint made by the said surveyor as aforesaid of any such refusal or wilful neglect as aforesaid to any justice of the peace, such justice may and he is hereby authorized and required to issue a summons under his hand for the collector so refusing or neglecting to appear before any two justices of the peace; and upon the said collector appearing, or having been so summoned and not appearing, without some sufficient or reasonable excuse, or not being found, it shall be lawful for the said two justices to hear and determine the matter; and if, upon confession of the party, or by the testimony of any credible witness on oath, it shall appear to such justices that any monies remain due from such collector, such justices may and they are hereby authorized and required upon non-payment thereof, by warrant under their hands, to cause such money to be levied by distress and sale of the goods and chattels of such collector; and if no goods and chattels of such collector shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for

**Part I.**

the county, city, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding 6 calendar months, or until he shall have paid such monies as aforesaid, or compounded with the surveyor as aforesaid for such money (which composition the said surveyor, with the consent of the inhabitants in vestry, or, in any parish where they do not meet in vestry, with the consent of the inhabitants contributing to the highway rate, at a public meeting assembled, is hereby empowered to make and receive) ; or if it shall appear to such justices that such collector had refused or wilfully neglected to render and give such accounts, or to produce and deliver the list of persons neglecting and refusing to pay their rates as aforesaid, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such collector, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such collector shall, on conviction thereof, forfeit for such offence any sum not exceeding £20, and in default of payment thereof shall be committed to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding four calendar months, or until he shall have given a true and perfect account as aforesaid, and delivered such list as aforesaid, and delivered up such books, papers, and writings, or give satisfaction in respect thereof to the said surveyor ; provided always, that no conviction or imprisonment of such collector as aforesaid shall exonerate or discharge any security taken from him on his appointment as aforesaid.

Separate  
accounts to  
be kept.

XXXIX. (a) And be it further enacted, that the surveyor in every parish shall keep separate and

(a) This section does not apply to the highway board of any district formed under H. Act, 1862. See sect. 42, sub.-sect. 8 of that Act.

distinct accounts of the monies levied for the highway rate; and such accounts shall specify the different sums, and the times when and the persons to whom and by whom the same shall have been collected and paid (b). Chap. XI.

XL. (c) And be it further enacted, that the said surveyor, district surveyor, or assistant surveyor, as the case may be, shall and he is hereby required from time to time to keep a book, in which shall be entered a just and true and particular account of all money which shall have come to his hands as surveyor, district surveyor, or assistant surveyor of the parish for the purposes of this Act, and to whom, and on what occasion, and for what work, and in what place, and on what day he shall have paid or applied the same, and also an account of all tools, materials, implements, and other things provided by him for the repair of the said highways; and such book shall at all reasonable times be open to the inspection of every inhabitant rated to the highway rate of the parish, or of any of the parishes united into a district, without fee or reward, and every such inhabitant may take copies or extracts from the said book, or any part thereof, without paying for the same; and in case the said surveyor, district surveyor, or assistant surveyor shall neglect to provide such book, or to enter therein every sum received or paid by him within one week after the same shall have been received or paid, or shall refuse to permit or shall not permit any such inhabitant as aforesaid at any reasonable time to inspect the same, or take copies or extracts as aforesaid, such surveyor, district surveyor, or assistant surveyor shall forfeit and pay any sum not exceeding £5 for each default, to be levied and applied in manner herein provided (d).

Surveyor to keep books and accounts of monies received, &c. (b).

to be open to inspection of rated inhabitants.

(b) See H. Act, 1878, s. 9, Part II., Chap. 14: and see Part X.

(c) See note (a), *ante*, p. 98.

(d) See the form of this account, Sched. to this Act, No. 5, *post*.

**Part I.**

The property  
in all books,  
&c., to be  
vested in  
surveyor for  
the time  
being.

**XLI.** And be it further enacted, that all the said books, papers, writings, and accounts, and all materials, tools, and implements which shall be provided in pursuance of this Act, for repairing or preserving the highways, and also the scrapings of the said highways, shall be vested in the surveyor for the time being (a), or in case a district surveyor shall be appointed, then all such books, papers, writings, and accounts, and all materials, tools, implements, and scrapings shall be invested in the district surveyor.

Surveyor, on  
quitting  
office, to  
deliver books,  
&c., to  
succeeding  
surveyor (b).

**XLII.** And be it further enacted, that the said surveyor, district surveyor, or assistant surveyor shall, within fourteen days after leaving his office, deliver such books and accounts verified as herein directed, together with all such sums of money as shall be due from him, and likewise all tools, materials, implements, and other things as aforesaid, to his successor in office, or retain the same in his hands, and account for them in his next account, if he shall be continued surveyor or district surveyor of such parish in the succeeding year; and in case such surveyor or district surveyor shall neglect to deliver within such time as aforesaid the said books, papers, writings, and accounts, and such tools, materials, implements, and other things, in manner aforesaid, he shall for every such offence forfeit any sum not exceeding £5; and in case he shall make default in the paying or accounting for the money so due from him within the time and according to the

Penalty for  
neglect.

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(a) In any indictment for felony or misdemeanor committed on or with respect to such materials, tools, or implements (7 Geo. 4, c. 64, s. 16), and in any information or complaint relating to the same (11 & 12 Vict. c. 43, s. 4), it is sufficient to describe them as the property of the surveyor or surveyors for the time being, without naming him or them.

(b) As to actions against outgoing surveyors to recover balances due from them, or the parish books detained, see *Hendebourck v. Langton*, 10 B. & C. 546; *Addison v. Round*, 4 A. & E. 799; 7 Car. & P. 285.

directions aforesaid, he shall forfeit double the money Chap. XI.  
so due.

XLIII. (c) And be it further enacted, that in case In case of death of surveyor, executors to account.  
of the death of any such surveyor, district surveyor, or  
assistant surveyor, before he shall have paid and fully  
satisfied all the monies which he shall have received by  
virtue of this Act, then and in every such case the  
executors or administrators of such surveyor, district  
surveyor, or assistant surveyor so dying shall pay and  
satisfy the same, out of his estate and effects, unto the  
succeeding surveyor, district surveyor, or assistant  
surveyor, in like manner as other debts are directed by  
law to be discharged by such executors or adminis-  
trators, and also shall deliver up all books, papers,  
writings, assessments, tools, materials, and implements,  
and other things concerning his office, which shall have  
come to the hands of such executors or administrators,  
who shall and may plead such payment in any action or  
suit which may be brought against them on account of  
the said estate and effects, and give the same in  
evidence; and in case of the non-payment of such  
monies, or the non-delivery of such books, papers,  
writings, assessments, tools, materials, implements, and  
things, for the space of one calendar month after  
demand made thereof in writing by or on behalf of the  
said succeeding surveyor, it shall be lawful for the said  
succeeding surveyor to commence and prosecute an  
action or actions in any of H. M.'s courts of record at  
Westminster, against such executors or administrators,  
for the recovery of the said monies, or for the recovery  
of damages for the detention of such books, papers,  
writings, assessments, tools, materials, implements, and

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(c) This section is not to apply to the highway board of any district formed under the H. Act, 1862. See sect. 42, sub-sect. 8.

**Part I.** things, in which action or actions full costs of suit shall be recovered by the said succeeding surveyor.

XLIV. Repealed by H. Act, 1878, s. 8, *post*, Part II., Chap. 14.

Justices to hold special sessions for purposes of this Act.

XLV. (a) And be it further enacted, that it shall and may be lawful for the justices of the peace within their respective divisions, or any 2 or more of them, and they are hereby required, to hold not less than 8, nor more than 12 special sessions in every year for executing the purposes of this Act, the days of the holding thereof to be appointed at a special sessions to be held within 14 days after the 20th day of March in every year: provided always, that it shall not be necessary to cause any notice to be given or sent to any justice acting and residing within such limits of the day or time of the holding thereof. The remainder of this section is repealed by 42 & 43 Vict. c. 39, s. 3, *post*, Part VII.

Surveyor may contract for getting and carrying materials, but not to share in any contract, or let to hire any team, or dispose of any timber, stones, &c., without license from two justices.

XLVI. And be it further enacted, that in every parish the surveyor may and is hereby authorized, with the consent of the inhabitants in vestry assembled, to contract for purchasing, getting, and carrying the materials required for the repair of the highway; and if any surveyor shall have any part, share, or interest, directly or indirectly, in any contract or bargain for work or materials to be made, done, or provided upon, for, or on account of any of the highway or other works whatsoever under his care or management, or shall upon his own account, directly or indirectly, use or let to hire any team, or use or sell or dispose of any materials, to be used or

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(a) Not to apply to any highway board formed under H. Act, 1862; see sect. 42, sub-sect. 8. By H. Act, 1864, s. 46, the justices assembled in *petty* sessions, at their usual place of meeting, may exercise any jurisdiction which they are authorised under the H. Acts, or any of them, to exercise in *special* sessions, and in certain specified cases justices are not disabled from acting.

employed in making or repairing such highway or other works as aforesaid (unless a license in writing for the sale of any such materials, or to let to hire any such team, be first obtained from two justices of the peace in special sessions assembled), he shall forfeit for every such offence, on conviction, any sum not exceeding £10, and be for ever after incapable of being employed as a surveyor with a salary under the authority of this Act (c). Chap. XI.  
Penalty (b).

XLVII. And be it further enacted, that if any person shall, without the consent of the surveyor, take away materials which shall have been purchased, gotten, dug, or gathered for the repair or use of any highway, or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any highway, before the surveyor and his workmen shall have discontinued working therein for the space of 6 weeks (except the owner of any private grounds, and persons authorized by such owner to get materials in such quarry for his own private use, and not for sale), every such person so offending shall for every such offence forfeit and pay, on conviction thereof, any sum not exceeding £10. Penalty on taking away materials belonging to surveyor.

XLVIII. And whereas under Acts of parliament heretofore made and which may hereafter be made for Land allotted to

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(b) A surveyor who, without the consent of the vestry, laid down flag-stones at the side of a road at an expense of £140, doing the team work himself, without the certificate of two justices, was held not entitled to be repaid the cost of the material supplied, or labour employed. *Wakefield v. Seneschal*, 29 J. P. 375. This section makes the contract illegal. *Barton v. Piggott*, 44 L. J. M. C. 5.

(c) By "H. Act, 1864," s. 20, this section does not apply to the highway board of any highway district, or to any parish within a highway district, and notwithstanding anything contained in 26 & 27 Vict. c. 61, or in any other Act, any waywarden may, with the license of two justices, contract for the supply or cartage of materials within his parish.



**Part I.**  
the parish  
for materials  
when ex-  
hausted may  
be sold (a).

the inclosing of waste land, parcels of land have been and may be expressly allotted to parishes or to the surveyor of the highways for the purpose of obtaining materials for the repair of the highways in such parish, and the material in such parcels of land have been and may be exhausted ; be it therefore enacted, that in such cases it shall and may be lawful for the surveyor of such parish for the time being, by and with the consent of the vestry, and he is hereby authorized and required, with the consent in writing of the justices of the peace at a special sessions for the highways, to sell and convey to some person whose lands adjoin thereto, or, if he refuse to purchase, to any other person, the said parcels of land from which the said materials have been so exhausted as aforesaid, at and for such price as the said justices may deem fair and reasonable (b), and with the money arising therefrom, and with such consent as aforesaid, to purchase other lands in lieu thereof (c).

(a) 39 & 40 Vict. c. 62, "The Sale of Exhausted Parish Lands Act, 1876," *post*, Part VII.

(b) Where under this section an exhausted gravel pit is offered for sale to the owner of adjoining lands to whom the statute gives the right of pre-emption, it is the duty of the justices at the special sessions, in fixing the price to be paid by him, to consider his interest as well as those of the parish. They are, therefore, while in the interest of the parish fixing a minimum below which the land shall not be sold, yet, in his interests, to fix a price fair for him to pay, and not to take as a standard of value a price which might be obtained on a sale by auction, or to some person who for some private or personal reasons would give an extraordinary price. An appeal to the quarter sessions under sect. 105 lies against the consent or determination of justices under sect. 48. *R. v. Drayton-in-Hales Highway Board*, 45 L. J. M. C. 126.

(c) The stat. 8 & 9 Vict. c. 71, extends this provision to all lands belonging to parishes or to the surveyors of the highways for the purpose of obtaining materials for the repair of the highways in such parishes, which had been or thereafter should be used for that purpose, as soon as the material shall have been exhausted.

It would seem that a sale to the surveyor would not be bad if made without fraud. *R. v. JJ. of Cambridgeshire*, 4 Ad. & E. 111.

**XLIX.** And be it further enacted, that it shall be in the power of tenants for life, ecclesiastical and lay corporations, and the proprietors of entailed estates, and of the trustees and guardians of any person under any legal disability or incapacity, to give up and renounce every claim of damage or compensation for such ground and materials as any highway may occupy on their respective properties, and that such renunciation shall be equally binding on the heirs and successors of such persons: provided nevertheless, that such renunciation of claim of damage or compensation be in writing, and signed by such tenant for life, proprietor, trustee, or guardian, in the presence of two witnesses, or in the case of corporations in such manner and form as is usually adopted by such corporations respectively; and such renunciation shall be enrolled at the quarter sessions which shall be held next after the signing or execution thereof.

**Chap. XI.**

**Tenant**  
for life, &c.,  
may renounce  
damages.

**L.** And be it further enacted, that when any lands or tenements have been or shall be given for maintenance of highways, the profits and proceeds of which are to be applied and disposed of for no other use, intent, or purpose whatsoever, all persons who are or shall be enfeoffed or trusted with any such lands or tenements shall, and they are hereby authorized and required to let them to farm at the most improved yearly value, without fine, for any term not exceeding 99 years: provided nevertheless, that previous to the granting of such lease the consent of the justices at a special sessions for the highways, neither of such justices being interested therein, by writing under their hands, shall be obtained as to the amount of rent to be received and the duration of the term.

**Persons**  
enfeoffed  
with lands  
for main-  
tenance of  
highways,  
&c., shall  
let them  
to farm  
at the most  
improved  
value, with  
consent of  
justices.

**LI.** And be it further enacted, that it shall and may be lawful for every such surveyor, in any waste land or

**Materials**  
where and  
in what

**Part I.**

manner to  
be taken by  
surveyors.

Power to  
gather  
stones with-  
out making  
satisfaction,  
but satis-  
faction to be  
made for  
damages  
done by car-  
rying them  
away.

common ground (a), river or brook, within the parish for which he shall be surveyor, or within any other parish wherein gravel, sand, stone, or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish), to search for, dig, get, and carry away the same, so that the said surveyor doth not thereby divert or interrupt the course of such river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of 150 feet above or below any bridge, nor within the like distance of any dam or wear; and likewise to gather stones lying upon any (b) lands or grounds within the parish where such highway shall be, for such service and purpose, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, without making any satisfaction for the said

(a) By sect. 20 of 39 & 40 Vict. c. 56, "An Act for facilitating the regulations and improvement of Commons, and for amending the Acts relating to the inclosure of Commons." "After the passing of this Act, where any common is regulated pursuant to this Act by a provisional order of the inclosure commissioners, confirmed by parliament, or is the subject of a scheme confirmed by parliament under the provisions of 'The Metropolitan Commons Act, 1866,' or 'The Metropolitan Commons Amendment Act, 1869,' or (being situate within the met. police district) is the subject of any private or local Act of parliament having for its object the preservation of such common as an open space, no surveyor of highways or highway board constituted in pursuance of the 'Highway Acts,' or trustees of any turnpike road shall search for, dig, get, or carry away gravel, sand, stone, or other materials in or from any part of such common which has not been set apart for that purpose with the sanction of parliament, without the consent of the person or persons having the regulation or management of the same, or in default of such consent, without an order of 2 or more justices in petty sessions assembled, and acting in and for the petty sessional division in which such common is situate, who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient."

(b) This includes enclosed land. *Alresford Rural Sanitary Authority v. Scott*, 50 L. J. M. C. 103.

materials, but satisfaction shall be made for all damages Chap. XI.  
 done to the lands or grounds of any person or persons  
 by carrying away the same, in the manner hereinafter  
 directed for getting and carrying materials in inclosed  
 lands or grounds; but no such stones shall be gathered  
 without the consent of the owner of such lands or  
 grounds, or a license for that purpose from two justices  
 at a special sessions for the highways, after having sum-  
 moned such owner to come before him,\* and heard his <sup>\* Sic.</sup>  
 reasons, if he shall appear and give any, for refusing his  
 consent.

LII. Provided always, and be it further enacted, that <sup>Not to extend</sup>  
 nothing in this Act contained relative to the gathering <sup>to sea beach,</sup>  
 or getting of stones or other materials shall extend <sup>&c.</sup> to  
 any quantity of stones or other materials thrown up by  
 the sea, commonly called beach, where the removal of  
 the same would cause any damage or injury by inunda-  
 tion to the lands adjoining or increased danger of  
 encroachment by the sea (c).

LIII. And be it further enacted, that it shall not be <sup>Notice to be</sup>  
 lawful for any surveyor, or any other person acting <sup>given before</sup>  
 under the authority of this Act, to dig, gather, get, <sup>materials are</sup>  
 take, or carry away any materials for making or repair- <sup>taken from</sup>  
 ing any highway out of or from any inclosed land or <sup>inclosed lands.</sup>  
 ground (d) until one calendar month's notice in  
 writing, signed by the surveyor, shall have been given  
 to the owner of the premises from which such materials  
 are intended to be taken, or to his known agent, and to  
 the occupier of the premises from which such materials  
 are intended to be taken, or left at the house or last or

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(c) See *Padwick v. Knight*, 7 Ex. 854; 22 L. J. Ex. 198.

(d) By stat. 4 & 5 Vict. c. 51, lands in the exclusive occupation of any one or more persons for agricultural purposes, shall be deemed to be inclosed lands within the meaning of this and the next sections, and of a similar section in the Turnpike Act, 3 Geo. 4, c. 126, although the same may not be separated from any adjoining lands or grounds of other persons, or from the highways, by any fence or other inclosure.

**Part I.**

If the occupier shows cause against the removal, two justices shall decide thereon.

usual place of abode of such owner or agent, and also of such occupier, to appear before the justices at a special sessions (a) for the highways, to show cause why such materials shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such justices shall, if they think proper, authorize (b) such surveyor or other person to dig, get, gather, take, and carry away such materials at such time or times (c) as to such justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear by himself or his agent, the said justices shall and may (upon proof on oath of the service of such notice) make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his agent, had attended.

If sufficient materials cannot be found in waste lands, &c., surveyor may take them from several or inclosed lands or grounds, making satisfaction to the owners.

LIV. And be it further enacted, that it shall be lawful for every such surveyor, for the use aforesaid, by licence in writing from the justices at a special sessions for the highways, to search for, dig, and get materials (if sufficient cannot be had conveniently within such waste lands, common grounds, rivers, or brooks), in or through any of the several or inclosed (d) lands or grounds of any person whomsoever (such lands or grounds not being a garden, yard, avenue to a house,

(a) As to justices present jurisdiction at petty sessions, see H. Act, 1864, s. 46, *post*.

(b) See the form of this authority, Sched. to this Act, No. 10, *post*.

(c) The authority should not be given for all time to come, but only for such time or times as to the justices may seem proper. When materials are required for the repair of the highways the surveyor is to go to the justices to authorize him to take such materials from the land as may be necessary for the requisite repairs then in contemplation, which authority should be co-extensive with the particular necessity: *Earl Munvers v. Bartholomew*, 48 L. J. M. C. 3.

(d) See note (c), p. 107.

lawn, park, paddock, or inclosed plantation, or inclosed wood not exceeding 100 acres in extent), within the parish where the same shall be wanted, or within any other parish (e) adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish where such highways lie, or in the waste lands, or common grounds, rivers, or brooks of such adjacent parish, and that a sufficient quantity of materials will be left for the use of the parish where the same shall be, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways; the said surveyor making such satisfaction for the materials which may be got or taken away, and also for the damage done to such lands or grounds by the getting and carrying away the same, as shall be settled and ascertained by order of the justices at a special sessions (f) for the highways (g).

Chap. XI.

LV. And be it further enacted, that if any surveyor or person employed by him shall, by reason of the searching for, digging, or getting any materials for repairing any highways, make any pit or hole in lands, common grounds, rivers, or brooks as aforesaid wherein

If surveyor shall make pits or holes in getting materials, he shall cause them to be

(e) See the form of a licence to get materials in another parish, Sched. to this Act, No. 11, *post*.

(f) As to their present jurisdiction at petty sessions, see H. Act, 1864, s. 46, *post*.

(g) The sufficiency of amends is to be determined by justices, and not by a jury; and where a surveyor took materials, as authorized by this section, and was sued for the damage, and paid money into court, as ascertained and settled by the justices, it was held that the sufficiency could not be questioned at *Nisi Prius*. *Peters v. Clarson*, 7 M. & G. 548.

The satisfaction should be awarded to the owner, or the occupier, or to both, in proportion to the damage done to the interests of the one or the other or of both, and the order must specify the particular land from which the materials are to be obtained. *R. v. Manning*, 1 Burr. 377.

**Part I.**

filled up or  
sloped down  
and fenced  
off;

and in like  
manner all  
those already  
made.

Penalties on  
surveyor for  
neglect  
therein.

such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open; and within 3 days after such pit or hole shall be opened or made, where no materials shall be found, cause the same to be forthwith filled up, levelled, and covered with the turf or clod which was dug out of the same; and where any such materials shall be found, within 14 days after having dug up sufficient materials in such pit or hole, cause the same to be filled up or sloped down, and fenced off, if required by the owner of the land or ground, and so continued; and every surveyor shall, within 21 days after he shall have been appointed to that office, cause all the said pits and holes which shall then be open and not likely to be further useful, to be filled up or sloped down in manner aforesaid, and if they are likely to be further useful, he shall secure the same by posts and rails or other fences to prevent accidents to persons or cattle; and in case such surveyor or person shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he shall forfeit the sum of 10*s.* for every such default; and in case such surveyor or person shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of 6 days after he shall have received notice for either of those purposes from any justice of the peace or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before the justices at a special sessions (*a*) for the highways, such surveyor, person or persons shall forfeit and pay any sum not exceeding £10 for such neglect, to be

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(*a*) As to justices present jurisdiction at petty sessions, see H. Act, 1864, s. 46, *post*.

determined and adjudged by such justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, and toward the repair of the roads in the parish where the offence shall be committed, in such manner as the said justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied (b). Chap. XI.

LVI. And be it further enacted, that if any surveyor or district surveyor shall lay or cause to be laid any heap of stone, or any other matter or thing whatsoever, upon any highway, and allow the same to remain there at night, to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by the said surveyor to guard against the same, he shall forfeit for every such offence any sum not exceeding £5.

Penalty on surveyor allowing any heap of stone, &c., to remain on highway at night.

LVII. And be it further enacted, that if any surveyor shall dig or cause to be dug materials for the highways, whereby any bridge, mill, building, dam, highway, occupation road, ford, mines, or tin works, or other work, may be damaged or endangered, he shall forfeit for every such offence, on conviction, any sum not exceeding £5, at the discretion of the justices before whom the complaint thereof shall be made, notwithstanding his liability to any civil action to which he may make himself liable by such act.

Surveyor damaging mill dams, &c., by digging materials to forfeit not exceeding £5.

LVIII. And whereas it frequently happens that the boundaries of parishes pass across or through the middle of a common highway, and one side of such highway is situated in one parish and the other side in another parish, whereby great inconveniences often arise in repairing the same; be it enacted, that the

Where a highway lies in two parishes, the justices to determine what parts shall be

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(b) See sects. 101, 103.



**Part I.**  
repaired by  
each (a).

justices at a special sessions (b) for the highways, on complaint (c) of any surveyor of any parish (stating in writing, and on a plan thereunto annexed, that there is such a highway, one side whereof ought to be repaired by one parish, and the other side by another, and particularly describing the same by metes, bounds, and admeasurement thereof), may issue their summons (d), with a copy of such writing and plan thereunto annexed, to the surveyor of such other parish to appear before them on a day mentioned in such summons; and if the parties appear, such justices may then proceed finally to decide the matter in manner herein mentioned, in case all the parties shall consent thereto; but in case the surveyor summoned shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter for any further time, not more than 21 days nor less than 14 days from the date of such adjournment, of which the surveyor not appearing, or appearing shall require further time, shall have notice, on which day the said justices shall proceed to hear the parties and their witnesses, and, whether the party summoned does or does not appear, shall proceed to examine and finally determine the matter in form following; (that is to say,) that it shall and may be lawful for such justices, and they are hereby required to divide the whole of such common highway, by a transverse line crossing such highway, into equal parts, or into such unequal parts and proportions as, in con-

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(a) As to an indictment for non-repair where a parish is within two counties, and a highway lying in one part is out of repair: *R. v. Clifton*, 5 T. R. 498; *R. v. Weston*, 4 Burr. 2057; *R. v. St. Pancras*, Peake, N. P. 219.

(b) As to their present jurisdiction at petty sessions, see H. Act, 1864, s. 46, *post*.

(c) See the form of this complaint or information, Sched. to this Act, No. 12, *post*.

(d) See the form of this summons, Sched. to this Act, No. 13, *post*.

sideration of the soil, waters, floods, and inequality of such highway, or any other circumstances attending the same, they in their discretion shall think just and right, and to declare, adjudge, and order (e) that the whole of such highway, on both sides thereof, in any of such parts, shall be maintained and repaired by one of such parishes, and that the whole thereof on both sides, in the other of such parts, shall be maintained and repaired by the other of such parishes, and shall cause such their order, and a plan of such highway, and the allotment thereof, as before mentioned, to be fairly delineated on paper or parchment, and filed with the clerk of the peace of the county in which such highway shall happen to lie, and shall also cause such posts, stones, or other boundaries to be placed and set up in such highway as in their judgment shall be necessary for ascertaining the division and allotment thereof: provided nevertheless, that in the case of any such last-mentioned highway, the repair of any part of which belongs to any body politic or corporate, or to any person, by the reason of tenure of any lands, or otherwise howsoever, the same proceedings may be adopted, but the said body politic or corporate, or person, or

Chap. XI.

Proviso in  
case of high-  
way repaired  
by party  
ratione  
tenure, &c.

(e) See the form of this order, Sched. to this Act, No. 14, *post*. Where two townships, A. and B., in the same parish, each maintaining its own highway, were entitled to common rights in a common adjoining the township of B., but far distant from the township of A.; the common was inclosed, and a public highway set out in it, on one side of which the allotments were awarded to A., and on the other side to B.; the surveyors of the respective townships having agreed to divide this road transversely as above described, one part to be repaired by A., the other by B., applied to the justices at a special sessions for the highways, and obtained from them an order under this section of the Act; but upon the right of the justices to make the order in such a case being litigated in the Court of Queen's Bench, that court held that the justices had no authority by the Act to make it; that it was only where a road is over the boundary line between two parishes or two townships respectively maintaining their own roads, that the justices have jurisdiction to make such an order: *R. v. Perkins*, 19 L. J. M. C. 105; 14 Q. B. 229. See, as to order filed with the clerk of the peace, *R. v. Washbrook*, 4 B. & C. 732; *R. v. Haslingfield*, 2 M. & S. 558.

**Part I.** — some one on their behalf, may appear before such justices, and object to such last-mentioned proceedings, in which case the said justices shall, before they divide such highway as aforesaid, hear and consider the objection so made, and determine the same.

Parishes, &c.,  
bound to  
repair the  
part so  
allotted.

LIX. And be it further enacted, that from and after such order and plan shall be so filed with the clerk of the peace as aforesaid, such parishes, and body politic or corporate, or person aforesaid respectively, shall be bound as of common right to maintain and keep in repair such parts of such highways so allotted to them as aforesaid, and shall be liable to be proceeded against for neglect of such duty, and shall in all respects whatsoever be liable and subject to all the provisions, regulations, and penalties contained in this Act, and also shall be discharged from the repair of such part of such highway as shall not be included in their respective allotment (a).

How costs  
of proceed-  
ings shall  
be defrayed,  
&c.

LX. And be it further enacted, that all costs, charges, and expenses to be incurred by reason of any of the proceedings last mentioned shall be borne and defrayed by such two parishes, or body politic or corporate, or person aforesaid, the same being settled and ascertained and duly apportioned between such parishes by such justices; and in case the said parties shall refuse or neglect to pay and discharge their respective share of such costs and expenses, it shall and may be lawful for

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(a) Under a like provision in stat. 34 Geo. 3, c. 64 (repealed by this Act), it was held by the Court of Queen's Bench that the order of the magistrates for thus dividing the highway transversely, one part to be repaired by one parish, the other part by the other parish, was conclusive of the liability of each parish to repair the portions of the road allotted to them; and that upon an indictment for not repairing a portion of road so allotted, it was not open to either of the parishes to impeach the order of the magistrates or their jurisdiction by producing evidence that no part of the road ever was within such parish. *R. v. Hickling*, 14 L. J. 177 M. C.; 7 Q. B. 880.

the justices at a special sessions (b) for the highways to levy the same by distress and sale, with costs of such distress, on the goods and chattels of any surveyor of the parish, or of any body politic or corporate, or person aforesaid, so refusing or neglecting to defray such costs and charges as aforesaid. Chap. XI.

LXI. And be it further enacted, that nothing herein contained shall extend, or be construed to extend, to affect, change, or alter in any manner whatsoever any boundaries of counties, lordships, hundreds, manors, or any other division of public or private property, nor the boundaries of any parishes or townships, otherwise than for the purpose of amending and keeping in repair such particular portion of the highway in the manner herein mentioned. Boundary of counties, &c., not to be changed, except for the purpose aforesaid.

LXII. And be it further enacted, that any body politic or corporate, or any person liable to repair any highway by reason of tenure of any lands or otherwise howsoever, or the surveyor of the parish in which the said highway is situate, may, if he or either party shall think proper, having first obtained the consent of the inhabitants in vestry assembled, apply to any justice for the purpose of making the said highway a parish highway, and to be repaired by the surveyor of the said parish; and the said justice is hereby authorized and required to issue his summons, requiring the said surveyor, or the party so liable to repair the said highway as aforesaid, to appear before the justices at the next special sessions (b) for the highways, and if both parties appear, such justices may then proceed to determine the matter; but in case the surveyor or party summoned Highway repaired by party *ratione tenura*, &c., may be made a parish highway (c).

(b) As to the justices' present jurisdiction at petty sessions, see H. Act, 1864, s. 46, *post*, Part II., Chap. 13.

(c) The H. Act, 1862, contains somewhat similar provisions (sects. 35, 36) under which a liability to repair *ratione tenura*, may be transferred to the parish. See H. Act, 1864, s. 24.

**Part I.**

shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter to the next special sessions (a) for the highways, of which the said surveyor or party not appearing shall have notice, on which day the justices so assembled at such special sessions shall proceed to hear the parties and their witnesses, and whether the surveyor or party summoned do or do not appear, shall proceed to examine and determine the matter; and in case they decide that the said highway shall become a parish highway, and be thereafter repaired by the surveyor of the said parish, they shall, by an order under their hands, fix the proportion of the expenses of repairing the said highway to be annually paid by such body politic or corporate, or person as aforesaid, to the surveyor of the said parish; and the order of the said justices shall be binding on the surveyor and the said parish, and the said body politic or corporate, or person as aforesaid, their heirs, successors, and assigns: provided nevertheless, that the said justices, instead of fixing the proportion of the expenses of repairing the said highway to be annually paid as aforesaid, may, by an order under their hands, fix a certain sum to be paid by such body politic or corporate, or person as aforesaid, to the surveyor of the said parish, in full discharge of all claims thereafter, in respect of the repairs of such highway; and in default of payment of such last-mentioned sum, or of such annual sum as aforesaid, the said surveyor may proceed for the recovery thereof in the same manner as any penalties and forfeitures are recoverable under this Act: provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair of such highways shall exceed the sum of £100, the said sum when received shall be vested, in the name of the minister, churchwardens, and surveyors

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(a) See note (c) *ante*, p. 115.

of the highways of the parish within which such highway shall be situate, in some public government securities, and the interest and dividends from time to time arising or accruing therefrom shall be applied towards the repairs of the highways within the said parish: provided also, that when the sums so fixed to be paid in full discharge of all claims as aforesaid shall not exceed the sum of £100, the said last-mentioned sum, or any part thereof, on the application by and with the consent of the inhabitants of the parish in vestry assembled, and of the justices in special sessions assembled, shall, and may be paid to the surveyor of the said parish, to be applied towards the repair of the highways within the said parish.

Chap. XI.

LXIII. And be it further enacted, that where in this Act any matter or thing is directed or forbidden to be done within a certain distance of the centre of the highway, that portion of ground shall be deemed and taken to be the highway (b) which has been maintained by the surveyor as highway, and repaired with stones or other materials used in forming highways, for the 6 months immediately preceding; and the centre of the highway shall be the middle of such highway, where a line being drawn along the highway, or a point marked, an equal number of feet of highway which have been so maintained, and repaired as aforesaid for 12 months before shall be found on each side of such line or mark.

What shall be deemed the centre of the highway.

LXIV. And be it further enacted, that no tree, bush, or shrub shall hereafter be planted on any carriageway or cartway, or within the distance of 15 feet from the centre (c) thereof, but the same shall respectively be cut down, grubbed up, and carried away, by the owner

No trees, &c., allowed to be planted within 15 feet of the centre of the carriageway.

(b) See *Chapman v. Robinson*, 28 L. J. M. C. 30; and *Evans v. Oakley*, 1 C. & K. 125, note to sect. 79, *post*.

(c) What shall be deemed the centre, see sect. 63, *supra*.

**Part I.** or occupier of the land or soil within 21 days after notice to him or his agent by the surveyor, on pain of forfeiting for every neglect the sum of 10s.

Mode of proceeding if highway is prejudiced by hedges, &c.

LXV. And be it further enacted, that if the surveyor shall think that any carriageway or cartway is prejudiced by the shade of any hedges, or by any trees (except those trees planted for ornament, or for shelter to any hop ground, house, building, or court yard of the owner thereof), growing in or near such hedges or other fences, and that the sun and wind are excluded from such highway, to the damage thereof, or if any obstruction is caused in any carriageway or cartway by any hedge or tree, it shall be lawful for any one justice of the peace, on the application of the said surveyor, to summon the owner (a) of the land on which such hedges or trees are growing next adjoining to such carriageway or cartway to appear before the justices at a special sessions (b) for the highways to show cause why the said hedges are not cut, pruned, or plashed, or such trees not pruned or lopped, in such manner that the carriageway or cartway shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such carriageway or cartway to the damage thereof, or why the obstruction caused in such carriageway or cartway should not be removed; and the question as to the cutting, pruning, or plashing such hedges, or the pruning and lopping such trees, or the removal of such obstruction as aforesaid, shall, upon proof of the service of such summons, and whether the said owner attend or not, be determined at the discretion of such last-mentioned justices (c); and if such

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(a) This means the person in occupation. *Woodard v. Billericay Highway Bd.*, 48 L. J. Ch. 535.

(b) As to justices present jurisdiction at petty sessions, see H. Act, 1864, s. 46.

(c) The order in this case must state particularly what the owner is required to do; it is not enough to call upon him to cause the hedges to be cut, pruned, or plashed, terms of which

justices shall order and direct that such hedges shall be cut, pruned, or plashed, or such trees pruned or lopped, in manner aforesaid, or such obstruction removed, the said owner shall comply therewith within ten days after a copy of such order shall have been left at the usual place of abode of the said owner, or of his steward or agent, and in default thereof shall forfeit on conviction, a sum not exceeding 40s.; and the said surveyor, if the order of the said justices is not complied with, shall, and he is hereby authorized and required to cut, prune, or plash such hedges, and to prune and lop such trees, for the benefit and improvement of the highway, and to remove such obstruction as aforesaid to the best of his skill and judgment, and according to the true intent

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he may doubt the meaning, or to remove an obstruction, without pointing out what the obstruction is, but his attention must be called to the manner in which he is required to do what is ordered. Per Lord DENMAN, C. J., in *Brook v. Jenny*, 2 Q. B. 266, 274. And where such an order, after reciting a complaint by the surveyor, that A. B., the owner of a certain farm, situate, &c., "had refused and neglected to cut, prune, and plash the hedges, and to prune and top the trees" on the right hand side of a certain carriageway (describing it), "whereby the sun and wind were excluded from the said carriageway, to the damage thereof, and whereby also obstructions were caused in the said carriageway,—ordered the said A. B. "to cause the said hedges to be cut, pruned, or plashed, and the said trees to be pruned or lopped, and the said obstruction complained of, to the injury and damage of the said highway, removed within ten days,"—the Court of Queen's Bench held the order to be bad, for not specifying more particularly in what manner and to what extent the owner was to cut the hedge; and this was a substantial defect, and not one merely of form; and that the surveyor was liable to an action of trespass for cutting the hedge, in default of the owner's obeying the order. *Brook v. Jenny*, *supra*. The order stated, that an obstruction was caused by reason of certain trees being allowed to grow on lands of Edward Woodard, and to overhang the carriage or cartway, and directed "that all such trees as grow in or near the hedges or other fences of the lands of the said Edward Woodard, abutting upon the carriage or cartway, shall be pruned or lopped, so that the obstruction caused to the said carriage or cartway there shall be removed." It was held, that as the trees had been described as overhanging the road, that the description was not ambiguous, and was quite sufficient to indicate what trees were meant, and were required to be pruned or lopped. *Woodard v. The Billericay Highway Board*, 48 L. J. Ch. 535; L. R. 11 Ch. D. 214.



**Part I.**

and meaning of this Act; and the said surveyor shall be reimbursed by the owner as aforesaid what charges and expenses he shall be at in cutting, pruning, and plashing such hedges, and pruning and lopping such trees, and the removal of such obstruction, over and above the said forfeiture; and it shall and may be lawful for the justices at a special sessions for the highways, upon proof to them made upon oath, to levy as well the expenses of cutting, pruning, and plashing such hedges, or pruning and lopping such trees, or removal of such obstructions as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorized and directed to be levied by virtue of this Act (a).

Time of  
cutting  
hedges and  
trees.

LXVI. Provided always, and be it further enacted, that no person shall be compelled nor any surveyor permitted to cut or prune any hedge at any other time than between the last day of September and the last day of March; and that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be widened or enlarged as herein mentioned, or then to cut down or grub up any oak trees growing in such highway, or in such hedges, except in the months of April, May, or June, or any ash, elm, or other trees in any other months than December, January, February, or March.

Surveyor to  
make and  
keep open  
ditches, &c.,  
and to lay

LXVII. And be it further enacted, that the said surveyor, district surveyor, or assistant surveyor shall have power (b) to make, scour, cleanse and keep open

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(a) See sects. 101, 102, 103. As to a *mandamus* to compel justices to issue a warrant for this purpose, see *ex p. Whitmarsh*, 8 Dowl. P. C. 431.

(b) See *ante*, p. 57.

all ditches (*d*), gutters, drains or watercourses, and also **Chap. XI.**  
 to make and lay such trunks, tunnels, plats, or bridges, trunks, &c.,  
 as he shall deem necessary, in and through any lands (*e*) through  
 or grounds adjoining or lying near to any highway, lands ad-  
 upon paying the owner or occupier of such lands or joining high-  
 grounds, provided they are not waste or common, for way, paying  
 the damages which he shall sustain thereby (*f*), to be for damage,  
 settled and paid in such manner as the damages for if any, in-  
 getting materials in inclosed lands or grounds are herein curring (e).  
 directed to be settled and paid.

**LXVIII.** And be it further enacted, that if any Owner, occu-  
 owner, occupier, or other person shall alter, obstruct, or pier, &c.,  
 in any manner interfere with any such ditches (*g*), not to alter  
 gutters, drains, or watercourses, trunks, tunnels, plats, such ditches  
 or bridges, after they shall have been made by or taken without con-  
 under the charge of such surveyor or district surveyor,  
 and without his authority and consent, such owner,  
 occupier, or other person shall be liable to reimburse all  
 charges and expenses which may be occasioned by  
 reinstating and making good the work so altered, ob-  
 structed or interfered with, and shall also forfeit any sum  
 not exceeding three times the amount of such charges  
 and expenses.

(*e*) See provisions upon this subject in Public Health Act, 1875, *post*, Part III.

(*d*) As to the common law obligation upon the owner of land adjoining a highway to cleanse his own ditches. See *ante*, p. 49.

(*e*) See *Earl of Derby v. Bury Imp. Com.*, L. R. 4 Ex. 222, 32 J. P. 263.

(*f*) A tender of satisfaction for any damages which may be sustained is not a condition precedent to the right of entry. *Peters v. Clarkson*, 7 M. & G. 548; 13 L. J. M. C. 153. See *Lister v. Lobley*, 7 A. & E. 124. The amount is to be ascertained and settled by justices as directed in sect. 54.

(*g*) It is an obstruction to a ditch if the occupier of a field adjoining a highway make an access to it across the ditch, and lay pipes which do not carry off the water-flow. *Rhodes v. Thomas*, 31 J. P. 117.

**Part I.**

Penalty for  
encroaching  
on highway.

Encroachment  
to be taken  
down by the  
surveyor.

**LXIX.** And be it further enacted, that if any person shall encroach (a) by making or causing to be made any building (b), hedge, ditch, or other fence (c) on any carriageway or cartway, within the distance of 15 feet from the centre (d) thereof, every person so offending shall forfeit, on conviction, for every such offence, any sum not exceeding 40s.; and the surveyor who hath the care of any such carriageway or cartway shall and he is hereby required (e) to cause such building, hedge, ditch, or fence to be taken down or filled up, at the expense of the person to whom the same shall belong; and it shall and may be lawful for

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(a) See H. Act, 1864, s. 51, *post*, which extends the above enactment. As to bringing forward buildings forming part of a street in an urban district, see Public Health Act, 1875, s. 156. See *Goldstraw v. Duckworth*, 49 L. J. M. C. 73, a case under a local Act.

(b) See *ante*, p. 59. If at the time when the road is dedicated to the public an obstruction exists, the dedication may be taken to have been subject to such obstruction, and then the continuance of it is not an offence. *Fisher v. Prowse*, 31 L. J. Q. B. 212. An information for a penalty under this Act must be laid within six months from the time when the encroachment was first made. 11 & 12 Vict. c. 43, s. 11, *ante*, p. 66. But no length of time will legalize an encroachment, and, therefore, an indictment will lie at any time. *R. v. Cross*, 3 Camp. 224. The encroachment, however, must be an appreciable one. *R. v. Leprue*, 30 J. P. 723. See p. 69, *ante*.

(c) A fence to come within this section must be within fifteen feet of the centre of the road, and also on the road. Thus, where a road was nine feet wide, and there was a piece of uninclosed land by the side of it, also nine feet wide, which land was so rough and uneven that no carriage ever did, or could go over it, MAULE, J., held that the surveyor of the highway was not justified in pulling down a fence which the owner of the adjoining field put upon this rough piece of land. *Evans v. Oakley*, 1 C. & K. 125. See also *Chapman v. Robinson*, 28 L. J. M. C. 30. See sect. 51 of "H. Act, 1864."

In an action for pulling down a cottage, it appeared that the plaintiff had been convicted under this section of encroaching upon the highway by building the cottage upon it, and the defendant justified as surveyor. It was held, that by this section he was required after conviction to take down the cottage; and, therefore, the conviction, though erroneous, was a defence to the action. *Keane v. Reynolds*, 2 E. & B. 748.

(d) As to what is to be deemed the centre, see sect. 63, *ante*, p. 117.

(e) See *Denny v. Thwaites*, 46 L. J. M. C. 141.

the justices at a special sessions for the highways, Chap. XI  
 upon proof to them made upon oath, to levy as well  
 the expenses of taking down such building, hedge, or  
 fence, or filling up such ditch as aforesaid, as the  
 several and respective penalties hereby imposed, by  
 distress and sale of the offender's goods and chattels,  
 in such manner as distresses and sales for forfeitures  
 are authorized and directed to be levied by virtue of  
 this Act.

LXX. And be it further enacted, that from and after the commencement of this Act it shall not be lawful for any person to sink any pit or shaft, or to erect or cause to be erected any steam engine (*f*), gin, or other like machine, or any machinery attached thereto, within the distance of 25 yards, nor any windmill within 50 yards, from any part of any carriageway or cartway, unless such pit or shaft, or steam engine, gin, or other like engine or machinery, shall be within some house or other building, or behind some wall or fence, sufficient to conceal or screen the same from the said carriageway or cartway, so that the same may not be dangerous to passengers, horses, or cattle; nor shall it be lawful for any person to make or cause to be made any fire for calcining or burning of ironstone, limestone, bricks, or clay, or the making of cokes, within the distance of 15 yards from any part of the said carriageway or cartway, unless the same shall be within some house or other building, or behind some wall or fence, sufficient to screen the same from the same carriageway or cartway as aforesaid; and in case any

Steam engines, &c., not to be erected, pit sunk, or fire made within a certain distance of roads.

(*f*) A portable steam threshing machine, travelling on wheels, which are not removed while it is at work, is a steam engine within the meaning of this section; and if employed within the prohibited distance, is a nuisance. *Smith v. Stokes*, 32 L. J. M. C. 199.

An information, however, will not lie against the owner, unless he is present, or cognizant of the fact of its being there employed. *Harrison v. Leaper*, 26 J. P. 373.

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person shall offend in any of the cases aforesaid, every such person so offending shall forfeit and pay any sum not exceeding £5 for each and every day such pit, shaft, windmill, steam engine, gin, machine, or fire shall be permitted to continue contrary to the provisions of this Act; which said penalties shall be levied, recovered, and applied in such and the same manner as any penalty or forfeiture for any other offence on any highway may be levied, recovered, and applied: provided that nothing herein contained shall be construed to restrain any person or persons from using, repairing, rebuilding, or enlarging any windmill, steam engine, gin, or other like machine, or any kiln, or other erection used for the purpose of calcining or burning of ironstone, limestone, bricks, or clay, or the making of cokes, which may have been erected and may be in existence at the passing of this Act.

Proprietors of railways to erect gates, &c., where they cross highways. Penalty on persons committing nuisances by riding on footpaths, &c.;

LXXI. Repealed by 37 & 38 Vict. c. 35, the Statute Law Revision Act, 1874. See *post*, Part VI.

LXXII. And be it further enacted, that if any person shall wilfully (a) ride upon any (b) footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers: or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle, or carriage of any description, or any truck or sledge, upon any such footpath or causeway; or shall tether any horse (c), ass, mule, swine, or cattle on any highway, so as to suffer or permit the

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(a) Suffering trees and underwood to grow over and across a highway so as to obstruct the free passage is not a wilful obstruction of the free passage within the meaning of 5 & 6 Will. 4, c. 50, s. 72. So held by MELLOR, J., and QUAIN, J., COCKBURN, C. J., dissenting. *Walker v. Horner*, 45 L. J. M. C. 34.

(b) This enactment does not apply to the case of a footpath, *simpliciter*, but only to such a footpath as is by the side of a road made, &c. *R. v. Pratt*, 36 L. J. M. C. 23; L. R. 3 Q. B. 64.

(c) As to depasturing cattle on a highway or the sides thereof, see H. Act, 1864, s. 25, *post*.

tethered animal to be thereon; or shall cause any injury or damage (d) to be done to the said highway, or the hedges, posts, rails, walls, or fences thereof (e); or shall wilfully obstruct the passage of any foot-way (f); or wilfully destroy or injure the surface of any highway; or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the said surveyor as herein directed; or dig or cut down the banks which are the securities and defence of the said highways; or break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same (g); or pull down, destroy, obliterate, or deface any milestone or post, graduated, or direction post or stone erected upon any highway; or shall play at football (h), or any other game on any part of the

Chap. XI.

by injuring  
the road;

by damaging  
banks,  
causesways,  
direction  
posts, mile-  
stones, &c.;

(d) See *Vestry of St. Mary, Newington, v. Jacobs*, 41 L. J. M. C. 72.

(e) By the "Malicious Injuries to Property Act," 24 & 25 Vict. c. 97, s. 25, unlawfully and maliciously cutting, breaking, throwing down, or in any way destroying any fence, wall, stile, or gate is made (for the first offence) punishable with fine not exceeding £5 beyond the injury done, and for the second offence with imprisonment not exceeding 12 months.

(f) Under the 5 Eliz. c. 4, s. 48, it is lawful to hold petty sessions, otherwise called statute sessions, in all shires wherein such sessions have been used to be kept, but there cannot be a legal custom to put up stalls for refreshments at such sessions on the public highway. And if such stalls are put up so as to obstruct the free passage of a public highway, the persons putting them up are liable to be convicted under sect. 72 of 5 & 6 Will. 4, c. 50. The jurisdiction of justices is not ousted by a claim of right to put up such stalls. *Simpson v. Wells*, 41 L. J. M. C. 105.

(g) By sect. 33 (24 & 25 Vict. c. 97), unlawfully and maliciously to pull or throw down or in anywise destroy any bridge (whether over any stream of water or not), or any viaduct or aqueduct over or under which bridge, viaduct, or aqueduct any highway shall pass, or to do any injury with intent and so as thereby to render such bridge, &c., or the highway passing over or under the same, dangerous or impassable, is made a felony punishable with penal servitude or imprisonment.

(h) See *Woolley v. Corbishley*, 24 J. P. 773. In *Pappin v. Maynard*, 32 L. J. M. C. 745, where the defendant was proved to have taken part in a mock hunt, in which the crowd met by advertisement in a highway and chased a person dressed like a

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Part I.</b>         | said highways, to the annoyance of any passenger or passengers; or if any hawker, higgler, gipsy, or other person travelling shall pitch any tent, booth, stall, or stand, or encamp upon any part of any highway; or if any person shall make or assist in making any fire (a), or shall wantonly fire off any gun or pistol, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever, within fifty feet of the centre of such carriageway or cartway; or bait, or run for the purpose of baiting, any bull, upon or near any highway; or shall lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon (b); or shall suffer any filth, dirt, lime, or other offensive matter or thing (c) whatsoever to run or flow into or upon any highway from any house, building, erection, lands or premises adjacent thereto; or shall in any way wilfully obstruct the free passage of any such highway; every person so offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding 40s., over and above the damages occasioned thereby (d). |
| by making fires;       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| by baiting bulls;      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| by laying timber, &c.; |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| by running of filth.   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

stag, it was held that the proceeding came under sect. 72, as "any other game."

(a) Making a fire, baiting a bull, or laying timber, &c., on a highway, are not offences within this section, unless the act be done to the injury of the highway, or to the injury, interruption, or personal danger of any person travelling thereon. There is an absolute prohibition of all the other acts specified. *Stinson v. Browning*, L. R. 1 C. P. 321; 35 L. J. M. C. 152.

(b) It has been held that a surveyor of highways who, in repairing a road, placed stones on it and allowed them to remain there at night insufficiently fenced and lighted was properly convicted under the above 72nd sect. *Fearnly v. Ormsby*, L. R. 4 C. P. D. 136.

(c) Rain water dripping from the eaves of a house is not an offensive matter or thing within the meaning of this section. *Crossdell v. Ratcliff*, 26 J. P. 165.

(d) Under the Vagrant Act, 5 Geo. 4, c. 83, persons committing the following offences in any public place or highway are punish-

**LXXIII.** And be it further enacted, that if any **Chap. XI.**  
timber, stone, hay, straw, dung, manure, lime, soil, Matters laid  
ashes, rubbish (e), or other matter or thing whatsoever, on or near  
shall be laid upon any highway so as to be a nuisance, highway, so  
and shall not, after notice given by the surveyor, assistant as to be a  
surveyor, or district surveyor, be forthwith removed, nuisance, to  
it shall and may be lawful for the surveyor, assistant be removed on  
surveyor, or district surveyor, by order in writing from notice; or on  
any one justice, to clear the said highway by removing failure,  
the said stone, hay, straw, dung, manure, soil, ashes, surveyor to  
rubbish, or other matter or thing as aforesaid, and to dispose of  
dispose of the same, and to apply the proceeds arising the same by  
therefrom towards the repairs of the highway within order of a  
the parish in which such highway may be situate: pro- justice (f).  
vided nevertheless, that if any soil, ashes, or rubbish,  
shall be laid on any highway, and such soil, ashes, or  
rubbish shall not be of sufficient value to defray the  
expense of removing them, the person who laid or  
deposited such soil, ashes, or rubbish, shall repay to  
the said surveyor, assistant surveyor, or district sur-  
veyor the money which he shall have necessarily ex-  
pended for the removal thereof, which money, in case

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able, viz.: Any common prostitute behaving in a riotous and indecent manner, sect. 3. Any person begging alms, id. Exposing to view any indecent print, picture, or exhibition, sect. 4. Wilfully exposing his person with intent to insult any female, id. Or playing or betting at or with any table or instrument of gaming, id. Also, any suspected person or reputed thief frequenting any highway (or place of public resort) with intent to commit a felony, id. The two first, with imprisonment for one month,—the others, for three months. This Act is amended by 38 & 37 Vict. c. 38.

(e) On the hearing of a complaint under this section for leaving rubbish on a highway after notice to remove it, the defendant, who was owner of the land on both sides of the alleged highway, denied it to be a highway; and as he claimed the soil, subject to a private right of way only, he contended that the justices ought not to adjudicate in the matter, on the ground that title to land came in question—held, that the objection was untenable, for that the justices had jurisdiction under the statute to determine whether the road was a highway or not. *Williams v. Adams*, 31 L. J. M. C. 109.

(f) As to cleansing streets under Public Health Act, 1875, ss. 42, &c., see Part III.



**Part I.** the same shall not be forthwith repaid, shall be levied as forfeitures are herein directed to be levied (a).

**Impounding cattle straying on highways.** LXXIV. This section is repealed by H. Act, 1864, s. 25, and in lieu of it another enactment is substituted. See Part II., Chap. 13.

**Punishing persons guilty of pound-breach.** LXXV. And be it further enacted, that in case any person shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle which shall be seized for the purpose of being impounded under the authority of this Act, from the pound or place where the same shall be so impounded, or in the way to or from any such pound or place, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto or with which the same shall be fastened, or shall rescue or release, or attempt to rescue or release, any distress or levy which shall be made under the authority of this Act, until or before such horse, ass, sheep, swine, or other beast or cattle seized or so impounded, or such distress or levy so made, shall be discharged by due course of law, every person so offending shall, upon conviction thereof before any two of H. M.'s justices of the peace, either upon confession of the party or parties offending, or upon oath of one credible witness, forfeit and pay any sum not exceeding £20, at the discretion of the said justices, and in default thereof be committed by such justices, by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour for any time, at

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(a) This section merely enables the surveyor if he has an order of a justice, to remove the nuisance; but it does not authorize the justice to convict or punish the surveyor for not removing it in pursuance of the order. *Morgan v. Leach*, 12 L. J. 4 M. C.; 10 M. & W. 558. See the form of the notice to be given by the surveyor, Schedule to the above Act, No. 15, *post*.

the discretion of the justices, not exceeding 3 calendar months. Chap. XI.

LXXVI. And be it further enacted, that the owner of every waggon, cart (b), or other such carriage, shall paint or cause to be painted in one or more straight line or lines, upon some conspicuous part of the right or off side of his waggon, cart, or other such carriage, or upon the off side shaft thereof before the same shall be used on any highway, his christian name and surname, or the style and title by which he is commonly designated, and the place of his trade or abode, or the christian and surname and place of trade or abode of a partner or owner thereof, at full length, in large legible letters in white upon black, or black upon white not less than one inch in height, and continue the same thereupon so long as such waggon, cart, or other such carriage shall be used upon any highway; and every owner of any waggon, cart, or other such carriage who shall use or allow the same to be used on any highway without the name and description painted thereon as aforesaid, or who shall suffer the same to become illegible, or who shall paint or cause to be painted any false or fictitious name or place of trade or abode on such waggon or cart or other such carriage shall forfeit and pay, on conviction, for every such offence, a sum not exceeding 40s., with or without costs, as to the justices before whom the conviction shall take place shall think fit.

Names of owners to be painted on all waggons, &c., in the manner herein mentioned.

LXXVII. And be it further enacted, that no one person shall act as the driver of more than two carts, waggons, or other such carriages on any highway:

One driver may take charge of two carts,

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(b) A light spring cart, used by the maker of agricultural implements for conveying them to market as well as for driving himself and family from place to place, and on which he paid a tax under 32 & 33 Vict. c. 14, s. 18, is not a "cart" within the meaning of the above section, so as to make it necessary for the

**Part I.**  
provided they  
are drawn  
only by one  
horse each.

provided always, that it shall and may be lawful for any one person to act as the driver of two carts, waggons, or other such carriages on any highway, and for such carts to pass and travel on any highway being only under the [care and superintendence of such single person: provided always, that such carts, waggons, or other carriages, when under the care of only one person, shall not be drawn by more than one horse each, and the horse of the hinder cart, waggon, or other carriage shall be attached by a rein in length not exceeding four feet to the back of the cart, waggon, or other carriage which shall be foremost; and in case the said horse shall not be so attached the driver of the said carts, waggons, or other carriages shall forfeit on conviction, the sum of 20s., to be recovered as other penalties are by this Act to be recovered.

Drivers of  
waggons or  
carts not to  
ride thereon  
unless some  
other person  
guide them.

Drivers  
causing hurt  
or damage  
to others, or  
quitting the  
road or

LXXVIII. And be it further enacted, that if the driver (a) of any waggon, cart, or other carriage (b) of any kind shall ride upon any such carriage, or upon any horse or horses drawing the same, on any highway, not having some other person on foot or on horseback to guide the same (such carriages and carts as are driven with reins, and are conducted by some person holding the reins of all the horses drawing the same excepted); or if the driver of any carriage whatsoever on any part of any highway shall by negligence or wilful misbehaviour (c) cause any hurt or damage to any person,

owner's name to be painted thereon. *Danby v. Hunter*, 49 L. J. M. C. 15; L. R. 5 Q. B. D. 20; *et per* LUSH, J., the section does not extend to gigs, dogcarts, or gentlemen's carriages.

(a) See *Williams v. Evans*, L. R. 1 Ex. D., 277; 41 J. P. 151. See *ante*, p. 63, as to regulations respecting wagons and drivers.

(b) A bicycle is a "carriage," and the propulsion of it by means of a person seated on and carried by it is a "driving of a carriage" within this section. *Taylor v. Goodwin*, 48 L. J. M. C. 104; L. R. 4, Q. B. D. 228.

(c) The appellant was convicted upon an information laid by the police under this section, for striking a horse ridden by H., and causing hurt and damage to H., then being and passing upon the highway. Subsequently H. laid an information under 24 & 25

horse, cattle, or goods conveyed in any carriage, passing or being upon such highway, or shall quit the same, and go on the other side of the hedge or fence inclosing the same, or negligently or wilfully be at such distance from such carriage, or in such a situation whilst it shall be passing upon such highway that he cannot have the direction and government of the horses or cattle drawing the same, or shall leave any cart or carriage on such highway, so as to obstruct the passage thereof; or if any person shall drive or act as the driver of any waggon, cart, or other such carriage not having the owner's name as hereby required painted and remaining legible thereon, and shall refuse to tell or to discover the true christian and surname of the owner or principal owners of such waggon, cart, or carriage; or if the driver of any waggon, cart, or other carriage whatsoever, or of any horses, mules, or other beast of draught or burden, meeting any other waggon, cart, or other carriage, or horses, mules, or other beasts of burden, shall not keep his waggon, cart, or carriage, or horses, mules, or other beasts of burden, on the left, or near side of the road; or if any person shall in any manner wilfully prevent any other person from passing him, or any waggon, cart, or other carriage, or horses, mules, or other beasts of burden under his care, upon such highway, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any person, waggon, cart, or other carriage, or horses, mules, or other beasts of burden, on any highway, or shall not keep his waggon, cart, or other carriage, or horses, mules, or other beasts of burden on the left or near side of the road, for the purpose of allowing such passage; or if any person riding (d) any horse or beast, or driving any

Chap. XI.

driving carriage without owner's name, or not keeping the left or near side, or interrupting free passage, if not the owner, to forfeit 20s., if he be the owner 40s.

Vict. c. 100, s. 42, for an assault in respect of the same matter. Held, that the appellant could not be convicted under the last summons. *Wemyss v. Hopkins*, 44 L. J. M. C. 101.

(d) A question has been raised, whether a person riding furiously upon any highway can be convicted under this

**Part I.**

Proceeding  
if driver will  
not discover  
his name.

sort of carriage, shall ride or drive the same furiously so as to endanger the life or limb of any passenger; every person so offending in any of the cases aforesaid, and being convicted of any such offence, either by his own confession, the view of a justice (a), or by the oath of one or more credible witnesses before any two justices of the peace, shall, in addition to any civil action to which he may make himself liable, for every such offence forfeit any sum not exceeding £5 in case such *driver* shall not be the owner of such waggon, cart, or other carriage, and in case the *offender* be the owner of such waggon, cart, or other carriage, then any sum not exceeding £10, and in either of the said cases shall, in default of payment, be committed to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding 6 weeks, unless such forfeiture shall be sooner paid; and every such *driver* offending in either of the said cases shall and may, by the authority of this Act, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be conveyed before any justice of the peace, to be dealt with according to law; and if any such *driver* in any of the cases aforesaid shall refuse to discover his name, it shall and may be lawful for the said justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the common gaol or house of correction, there to be kept to hard labour, for any time

section. It will be seen that in fixing the penalty in the subsequent part of the section, the words *driver*, and "waggon, cart, or other carriage," are only used. See 27 J. P. 796; *R. v. Kingsby*, 15 J. P. 65; *Underhill v. Longridge*, 24 J. P. 148. The better opinion seems to be in favour of a conviction. See *Williams v. Evans*, ante, p. 130.

(a) Where a driver committed an offence against the repealed H. Act, 13 Geo. 3, c. 78, s. 60, in view of a justice, and refused to discover his name, or to allow the justice to see the name of his master on the waggon, and the justice stopped the horses, and removed the driver, so as to read the name, it was held, that an action of trespass lay against him at the suit of the driver. *Jones v. Owen*, 2 D. & R. 600.

not exceeding 3 months, or to proceed against him for the penalty aforesaid by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name. Chap. XI.

LXXIX. And whereas offences may be committed against this Act by persons whose names are unknown to the surveyor, assistant surveyor, or district surveyor: be it therefore enacted, that it shall be lawful for the surveyor, assistant surveyor, or district surveyor, or any person acting under his authority, and such other person as he shall call to his assistance, or any other person witnessing the commission of the offence, without any other authority than this Act, to seize and detain such unknown person who shall commit any such offence, and take him forthwith before any justice of the peace, who shall proceed and act with respect to such offence according to the provisions of this Act. For securing unknown offenders.

LXXX. And be it further enacted, that the said surveyor shall and he is hereby required to make, support, and maintain, or cause to be made, supported, and maintained, every public cartway leading to any market town 20 feet wide at the least (b), and every public horseway 8 feet wide at the least, and to support and maintain every public footway by the side of any carriageway or cartway 3 feet at the least, if the ground between the fences including the same will admit thereof: provided nevertheless, that nothing herein contained shall require any surveyor to make or form any public footway without the consent of the inhabitants in vestry assembled. Cartways to be 20 feet wide, horseways 8 feet, and footways 3 feet.

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(b) That is to maintain the existing road to the extent of 20 feet at the least, if the space between the fences allow it. The surveyor has no authority under this section to pare away the bank of a fence by the side of a road. *Alston v. Scales*, 9 Bingh. 3. If the road is not of sufficient width, it may be widened by order of justices under sect. 82, *post*, p. 134; and see H. Act, 1864, ss. 44, 47, 48, Part II., Chap. 13.

**Part I.**

Width of  
gates across  
public cart-  
ways and  
horseways.

**LXXXI.** And be it further enacted, that if any gate across any public cartway shall be less than 10 feet wide, or any gate across any public horseway shall be less than 5 feet wide, clear between the posts thereof, then and in every such case, upon notice in writing from the surveyor to the person to whom such gate shall belong, left at the dwelling house of such person or his steward or agent, requiring him to enlarge the same, if such person shall neglect for the space of 21 days after such notice shall have been left as aforesaid to remove or enlarge such gate, he shall forfeit a sum not exceeding 10*s.* for every day he shall so neglect to remove or to enlarge such gate as aforesaid.

Justices may  
order narrow  
highways to be  
widened.

**LXXXII.** Provided always, and be it further enacted, that where it shall appear, upon the view of two justices of the peace, that any highway is not of sufficient breadth (a), and might be widened and enlarged, such justices shall and they are hereby empowered, within their respective divisions, to order (b) such highway respectively to be widened and enlarged in such manner as they shall think fit, so that the said highway, when widened and enlarged, shall not exceed 30 feet in breadth; and that neither of the said powers do extend to pull down any house (c), or building, or to take

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(a) See 32 J. P. 702.

(b) See the form of this order, Sched. to above Act, No. 16, *post.*

(c) By sect. 91, *post.*, the court of quarter sessions are authorized to make an order (after the requisite preliminary steps have been completed) for diverting a highway, "subject to such exceptions and conditions in all respects as in this Act is mentioned in regard to highways to be widened." *Semble*, that the limitation as to not pulling down a house, &c., does not apply to the diverting of a highway, which must be done with the consent of the owner of the land through which the new road passes; but it was held (assuming it to apply to such a case), that where, at the instance of A., and with his consent, the quarter sessions made an order that a highway should be diverted, and a new highway substituted through the lands of A., with a proviso that the surveyors, in

away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation, or avenue to any house, or any inclosed ground set apart for building ground or as a nursery for trees; and for the satisfaction of the person, body politic or corporate, who is seized or possessed of or interested in their own right, or in trust for any other person, in the said ground that shall be laid into the said highway respectively so to be widened and enlarged, the said surveyor, under the direction and with the approbation of the said justices in writing, shall and is hereby empowered to make an agreement with him for the recompense to be made for such ground, and for the making such new ditches and fences as shall be necessary, according and in proportion to their several and respective interests therein, and also with any other person, body politic or corporate, that may be injured by the widening and enlarging such highway, for the satisfaction to be made to him respectively as aforesaid; and if the said surveyor, under the direction and with the approbation of the said justices, cannot agree with the said person, body politic or corporate, or if he cannot be found, or shall refuse to treat or take such recompense or satisfaction as shall be offered to them respectively by such surveyor, then the justices of the peace at any general quarter sessions to be holden for the limit wherein

Chap. XI.

Surveyor to agree with owners of lands for recompense, and if they cannot agree the same may be assessed by a jury at the quarter sessions.

making it, were not to pull down any house, &c.; and the surveyors made the new road, not according to the plan deposited with the clerk of the peace, but as nearly on the line there set forth as was practicable, without pulling down a house (a house having been in the meantime built by A.); that the power given by statute for diverting the old highway had not been carried out. Held also, that the proviso rendered the order of sessions bad on its face: inasmuch as it threw upon the discretion of the surveyors (who are bound ministerially to execute) that which is, in truth, a restraint upon the magistrates who are to order; and that, if it were rejected, the new highway would not be made in pursuance of the order. *R. v. Newmarket R. Co.*, 19 L. J. M. C. 241. Under H. Act, 1864, ss. 47, 48, a highway board may widen a road.



Part I.

On payment  
of money  
assessed,  
ground to  
be deemed  
a public  
highway.

such ground shall lie, upon certificate (a) in writing signed by the justices making such view as aforesaid of their proceedings in the premises, and upon proof of 14 days' notice (b) in writing having been given by the surveyor of such parish to the owner, occupier, or other person, body politic or corporate, interested in such ground, or to his guardian, trustee, clerk, or agent, signifying an intention to apply to such quarter sessions for the purpose of taking such ground, shall impanel a jury of 12 disinterested men out of the persons returned to serve as jurymen at such quarter sessions; and the said jury shall, upon their oaths, to the best of their judgment, assess the damages to be given and recompense to be made to the owners and others interested as aforesaid in the said ground for their respective interests (c), as they shall think reasonable, not exceeding 40 years' purchase for the clear yearly value of the ground so laid out, and likewise such recompense as they shall think reasonable for the making of new ditches and fences on the side of the said highway that shall be so widened and enlarged, and also satisfaction to any person, body politic or corporate, that may be otherwise injured by the widening and enlarging the said highways respectively; and upon payment or tender of the money so to be awarded and assessed to the person, body politic or corporate, entitled to receive the same, or leaving it in the hands of the clerk of the peace of such limit, in case such person, body politic or corporate, cannot be found or shall

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(a) See the form of this certificate, Sched. to this Act, No. 17, *post*.

(b) It must appear on the inquisition of the jury that notice was given. *R. v. Bagshaw*, 7 T. R. 363. See also *R. v. Trustees of the Norwich and Watton Roads*, 5 A. & E. 563.

(c) Separate compensation must be made to each of the parties interested according to the amount of his interest; and an inquisition awarding one entire sum to the whole of the parties interested was held bad. *R. v. Trustees of the Norwich and Watton Roads*, 5 A. & E. 563.

## Chap. XI.

refuse to accept the same, for the use of the owner of or others interested in the said ground, the interest of the said person, body politic or corporate, in the said ground shall before ever divested out of them; and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public highway to all intents and purposes whatsoever; saving nevertheless to the owner of such ground all mines, minerals, and fossils lying under the same which can or may be got without breaking the surface of the said highway, and also all timber and wood growing upon such ground, to be felled and taken by such owner within one month after such order shall have been made, or in default thereof to be felled by the said surveyor within the respective months aforesaid (*d*), and laid upon the land adjoining, for the benefit of the said owner; and where there shall not appear sufficient money in the hands of the surveyor for the purpose aforesaid, then the said two justices in cases of agreement, or the said court of quarter sessions after such verdict as aforesaid, shall direct the surveyor to make, collect, and levy an equal rate in the same manner as the rate by this Act authorized to be made, and to pay the money to the person, body politic or corporate, so interested, in such manner as the said justices or court of quarter sessions respectively shall direct and appoint; and the money thereby raised shall be employed and accounted for, according to the order and direction of the said justices or court of quarter sessions respectively, for and towards the purchasing the land to widen and enlarge the said highway, and for making the said ditches and fences, and also satisfaction for the damages sustained thereby; provided that no such rate to be made in any one year shall exceed one-third part of the rate by this Act authorized to be levied, in addition to the rate for the repair of the highways.

Where there is not money sufficient, a further rate may be made, by order of the justices at their quarter sessions, not exceeding one-third of rate.

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(*d*) See sect. 66, *ante*, p. 120.

## Part I.

Costs of proceedings, by whom payable.

**LXXXIII.** And be it further enacted, that in case such jury shall give in and deliver a verdict for more monies as a recompense for the right, interest, or property of any person, body politic or corporate, in such lands or grounds, or for the making such fence, or for such damage or injury to be sustained by him as aforesaid, than what shall have been proposed and offered by the said surveyor before such application to the said court of quarter session as aforesaid, that then and in such case the costs and expenses attending the said several proceedings shall be borne and paid by the surveyor out of the monies in his hands or to be assessed and levied by virtue and under the powers of this Act ; but if such jury shall give and deliver a verdict for no more or for less monies than shall have been so offered and proposed by the said surveyor before such application to the said court of quarter sessions, that then the said costs and expenses shall be borne and paid by the person, body politic or corporate, who shall have refused to accept the recompense and satisfaction so offered to him as aforesaid.

Previous to highway being stopped up, &c., surveyor to request justices to view the same (a).

**LXXXIV. (b).** And be it further enacted, that when the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up (c), diverted, or turned, either entirely or reserving a bridleway or footway along the whole or any part or parts thereof, the chairman of such meeting shall,

(a) These provisions cannot be applied to the diversion of a highway, which by a local Improvement Act is put under the management of commissioners,—the said commissioners being liable to repair, but having no special power to divert highways. See sect. 113, *post*. *Wright v. Frant*, 27 J. P. 645 ; 32 L. J. M. C. 204.

(b) See H. Act, 1878, s. 24, Part II., Chap. 14, as to unnecessary highways being declared not repairable at the public expense.

(c) See *ante*, p. 64. As to varying and stopping footpaths over churchyards, see 59 Geo. 3, c. 134, s. 39. 55 Geo. 3, c. 68, s. 2. *R. v. Stock*, 8 A. & E. 405. *R. v. Arkwright*, 12 Q. B. 960. *R. v. Twiss*, L. R. 4 Q. B. 407; by commissioners of Inclosure Acts, 41 Geo. 3, c. 109, ss. 8, 11.

By 23 & 24 Vict. c. 112 (Defence of the Realm Act), sect. 40,

by an order in writing (*d*), direct the surveyor to apply to two justices to view (*e*) the same, and shall authorize him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act: provided nevertheless, that if any other party shall be desirous of stopping up, diverting, or turning any highway as aforesaid, he shall, by a notice in writing, require the surveyor to give notice (*f*) to the churchwardens to assemble the inhabitants in vestry, and to submit to them the wish of such person; and if

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it shall be lawful for the Secretary of State, without any writ being issued or other legal proceeding being adopted, to stop up or divert or alter the level of any highway, way, sewer, drain, or pipe over, through, under, or adjoining any lands comprised in a declaration to be made and signed by him (sect. 1), he, if necessary, previously making, opening, or laying down another good and sufficient way, sewer, drain, or pipe in lieu of that stopped up or diverted.

By 26 & 27 Vict. c. 65 (Volunteer Act, 1868), sect. 37, where a footpath crosses or runs inconveniently or dangerously near to any land purchased or acquired, or in respect of which any license is granted for the purposes of this part of this Act (i.e. for rifle or artillery practice, and for the erection of butts, targets, batteries, &c.) Such footpath may, with the consent of the vestry of the parish in which the same is situate, and upon the certificate of two justices that the footpath to be substituted is convenient for the public, be stopped up or diverted. All proceedings to obtain such certificate, and to stop up or divert such footpath, shall be taken in the manner in which proceedings are directed to be taken by Act 5 & 6 Will. 4, c. 50, in cases where a person other than the inhabitants in vestry is desirous of stopping up, diverting, or turning a highway, or as near thereto as circumstances admit; with this exception that the certificate of the justices shall be conclusive in cases where it states the fact of their having viewed the footpath to be stopped up or diverted, and that the proposed new footpath is convenient for the public.

(*d*) When the proceedings are taken at the instance of an individual this order is not necessary. *R. v. Maule*, 41 L. J. M. C. 47.

(*e*) This view must be jointly by both justices. *R. v. J.J. of Cambridgeshire*, 4 Ad. & El. 111.

(*f*) Notice of a vestry meeting was given in the words following:—"Hamlet of Trevecca,—I, the undersigned, hereby give notice that a meeting of the ratepayers of the above hamlet will be held at the vestry-room, &c. . . . for the purpose of taking into consideration the proceedings now taken by Mr. John Parry,

**Part I.** such inhabitants shall agree to the proposal, the said surveyor shall apply to the justices as last aforesaid for the purposes aforesaid; and in such cases the expenses aforesaid shall be paid to such surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under this Act; and the said surveyor is hereby required to make such application as aforesaid.

Proceeding  
for diverting,  
&c., certain  
highways  
and stopping  
up unneces-  
sary high-  
ways (a).

LXXXV. And be it further enacted, that when it shall appear upon such view of such two justices of the peace, made at the request of the said surveyor as aforesaid, that any public highway may be diverted and turned, either entirely or subject as aforesaid, so as to make the same nearer or more commodious to the public, and the owner of the lands or grounds through which such new highway so proposed to be made shall

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of , against Mr. Rhys Davies, surveyor of the Talgarth District Highway Board, respecting Blaenabach Road, and for other purposes connected with the highways of the above hamlet."

The meeting so convened passed a resolution that the road should be stopped up under the Highway Act, 5 & 6 Will. 4, c. 50, s. 84: *Held*, that, having regard to the fact that proceedings had been taken for compelling the parish to repair the highway the notice sufficiently informed the public that any steps which might be necessary for defeating these proceedings, such as stopping up the highway, would be considered by the vestry, and that the meeting was therefore duly convened. *R. v. Powell*, 42 L. J. M. C. 129.

(a) "It ought to appear unequivocally that the justices acted on their own view, and derived their conviction from that. There is no part of the administration of the law by justices acting on their own authority, in which it is more necessary for the court to look closely at their proceedings than the stopping of highways." COLERIDGE, J., in *R. v. Jones*, 12 Ad. & E. 684.

From some cases it would seem that it must appear on the face of the certificate that all the particulars required in sect. 84 have been complied with (*R. v. JJ. of Worcestershire*, 23 L. J. M. C. 113). It should appear on the certificate that the highway was actually inspected by the justices (*R. v. Marquis of Downshire*, 4 Ad. & E. 721); that the justices were together when they viewed it; that the finding that it was unnecessary was the result of that view (*R. v. JJ. of Worcestershire*, 8 B. & C. 254; *R. v. JJ. of Cambridgeshire*, 4 A. & E. 111; *R. v. JJ. of Kent*, 10 B. & C. 477; *R. v. Jones*, 12 Ad. & E. 684; *R. v. Milverton*, 5 Ad. & E. 841; *De Ponthieu v. Pennyfeather*, 5 Taunt. 634; *R. v. Wallace*, L. R. 4 Q. B. D. 641). See also *R. v. JJ. of Middlesex*, 5 Ad. & E. 626;

consent thereto by writing under his hand (*b*), or if it shall appear on such view that any public highway is unnecessary, the said justices shall direct the surveyor to affix a notice (*c*) in the form or to the effect of schedule (No. 19) to this Act annexed, in legible characters, at the place and by the side of each (*d*) end of the said highway from whence the same is proposed to be turned, diverted, or stopped up, either entirely or subject as aforesaid, and also to insert the same notice in one newspaper published or generally circulated in the county where the highway so proposed to be diverted and turned or stopped up, either entirely or subject as aforesaid (as the case may be), shall lie, for 4 successive weeks next after the said justices have viewed such public highway, and to affix a like notice on the door

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*R. v. JJ. of Suffolk*, 6 B. & C. 110; *R. v. Sheppard*, 3 B. & A. 414; *R. v. JJ. of Surrey*, 5 B. & C. 241.

A certificate of two justices relative to the stopping up of a highway did not state that the surveyors, at whose request, it was alleged, the justices viewed the highway, had first duly obtained the consent of the inhabitants in vestry assembled to the proposed stopping up of the highway, after a notice in writing from the party desirous of stopping up the same, requiring the surveyors to convene a meeting of the vestry for the purpose of obtaining such consent, or that the surveyors were at the time of the said request to view, in possession of and acting under an order in writing of the chairman of a meeting of the inhabitants in vestry assembled. Held, in opposition to the dictum in *The Queen v. The Justices of Worcestershire*, that the certificate was not bad for not containing statements as to these matters. *R. v. Hervey*, 44 L. J. M. C. 1; L. R. 10 Q. B. 52. From this case it would seem that the certificate ought to state all that is required to be proved before the justices, and all that the justices are required to do, which would be matters within their own knowledge—and nothing more. See *R. v. Maule*, 41 L. J. M. C. 47: *sed quæry*.

(*b*) See the form of this consent, Sched. to above Act, No. 18, *post*. If the estate has changed hands since the consent was given and before order made (*R. v. JJ. of Denbighshire*, 2 D. & R. 52), or if the consent be under the hand of the solicitor or agent (*R. v. JJ. of Kent*, 1 B. & C. 622; *R. v. Crewe*, 3 D. & R. 6), it will be insufficient.

(*c*) See the form of this notice, Sched. to above Act, No. 19, *post*. See *R. v. Horner*, 2 B. & Ad. 150.

(*d*) See *R. v. JJ. of Surrey*, 39 L. J. M. C. 145, where there were 3 roads which were part of one system and formed a figure like the letter Y.

**Part I.**

of the church of every parish in which such highway so proposed to be diverted, turned, or stopped up, either entirely or subject as aforesaid, or any part thereof, shall lie, on 4 successive Sundays next after the making such view; and the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices, and a plan having been delivered to them at the same time particularly describing the old and the proposed new highway, by metes, bounds, and admeasurement thereof, which plan shall be verified by some competent surveyor, the said justices shall proceed to certify under their hands the fact of their having viewed the said highway as aforesaid, and that the proposed new highway is nearer or (a) more commodious to the public; and if nearer, the said certificate shall state the number of yards or feet it is nearer, or if more commodious, the reasons why it is so; and if the highway is proposed to be stopped up as unnecessary, either entirely or subject as aforesaid, then the certificate shall state the reason why it is unnecessary; and the said certificate of the said justices, together with the proof and plan so laid before them

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(a) It was formerly held, *R. v. Shiles*, 1 Q. B. 919, that the word "or" must be read "and," and that where a road was diverted, the way substituted for the old one must be both nearer and more commodious, and that the certificate must be to that effect and borne out by evidence on appeal: but it has lately been decided, overruling the former judgment, that if the vestry are satisfied that the new way would be more commodious, though not nearer; or that they are content to take a way which is nearer, and which though not necessarily more commodious, would generally be so, and the justices certify on the view that such way would be more commodious, or nearer, as the case may be, the diversion may be made. *R. v. Phillips*, L. R. 1 Q. B. 648; 35 L. J. M. C. 217.

It is not necessary that the highway to be substituted should be entirely new. *Reg. v. Phillips*, *supra*.

It is not sufficient if the certificate state that the new way will be more commodious when a certain diversion has been made under the provisions of an Act of parliament for forming a reservoir, for that would be certifying upon a contingency which may never happen. *R. v. Midgley*, 28 J. P. 373; 5 B. & S. 621; 33 L. J. M. C. 188.

as aforesaid, shall, as soon as conveniently may be after the making of the said certificate, be lodged with the clerk of the peace for the county in which the said highway is situated, and shall (at the quarter sessions which shall be holden for the limit (b) within which the highway so diverted and turned or stopped up, either entirely or subject as aforesaid, shall lie, next after the expiration of 4 weeks from the day of the said certificate of the said justices having been lodged with the clerk of the peace as aforesaid), be read by the said clerk of the peace in open court; and the said certificate, together with the proof and plan as aforesaid, as well as the consent in writing of the owner of the land through which the new highway is proposed to be made, shall be enrolled (c) by the clerk of the peace amongst the records of the said court of quarter sessions: provided always, that any person whatever shall be at liberty, at any time previous to the said quarter sessions, to inspect the said certificate and plan so as aforesaid lodged with the said clerk of the peace, and to have a copy thereof on payment to the clerk of the peace at the rate of sixpence per folio, and a reasonable compensation for the copy of the plan.

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LXXXVI. Provided always, and be it further enacted, that in any case where it is proposed to stop up or divert more than one highway, which highways shall be deemed to be so connected together as that they cannot be separately stopped or diverted without interfering one with the other, it shall be lawful to include such different highways in one order or certificate (d).

As to stopping up more than one highway connected together.

LXXXVII. Provided also, and be it further enacted, that in the event of any appeal being brought against

Court may confirm order for so

(b) The word "limit" here means the county, &c., in which the road is situate, and not any division of it. *R. v. JJ. of Suffolk* 17 L. J. M. C. 143, *post*, p. 144.

(c) It was held under the words of the repealed statutes, that the provision as to enrolment was directory only. *De Ponthieu v. Pennyfeather*, 5 Taunt. 634.

(d) See *R. v. Milverton*, 5 Ad. & E. 841.



**Part I.**  
doing wholly  
or in part.

the whole or any part or parts of any order or certificate for diverting (a) more highways than one, it shall be lawful for the court to decide upon the propriety of confirming the whole or any part or parts of such order or certificate, without prejudice to the remaining part or parts thereof.

Persons who  
may think  
themselves  
aggrieved  
if such  
highway  
should be  
ordered to  
be stopped  
up, &c., may  
appeal.

**LXXXVIII.** Provided always, and be it further enacted, that when any such certificate shall have been so given as aforesaid, it shall and may be lawful for any person who may think that he would be injured or aggrieved (b) if any such highway should be ordered to be diverted and turned or stopped up, either entirely or subject as aforesaid, and such new highway set out and appropriated in lieu thereof as aforesaid, or if any unnecessary highway should be ordered to be stopped up as aforesaid, to make his complaint thereof by appeal to the justices of the peace at the said quarter sessions (c),

(a) See *R. v. Midgley*, 28 J. P. 373; 5 B. & S. 621.

(b) In order to be entitled to appeal, a person must be prepared to show that he would sustain some special and peculiar injury by the diversion, &c., of the way (3 Burn's Justice "Highways"); and the notice of appeal must state that he is injured and aggrieved, or it must appear therefrom that such is the case. (Id.) See the cases there cited: *R. v. Essex*, 5 B. & C. 431; *R. v. Williamson*, 7 T. R. 32; *R. v. JJ. of Somersetshire*, 7 B. & C. 682; *R. v. Adey*, 4 Nev. & M. 365; *R. v. JJ. of Yorkshire, (W. R.)*, 4 B. & Ad. 665. See also *R. v. Taunton St. Mary*, 3 M. & S. 465; *R. v. Ingleton*, 1 M. & S. 268; *R. v. JJ. of Westmoreland*, 1 D. & L. 178; *R. v. Townsend*, 5 B. & A. 429.

(c) This means the next quarter sessions for the county, and not any local adjournment of it; and where the sessions were held on certain fixed days at different places for different divisions of a county, but on each by an adjournment from the preceding, it was holden that the notice of appeal must be given 10 days before the holding of the quarter sessions for the first division, although the highways be not within that division. *R. v. JJ. of Suffolk*, 17 L. J. M. C. 143. *R. v. JJ. of Lancashire*, 8 E. & B. 563.

The appeal must also be made to the quarter sessions held next after the expiration of 4 weeks from the day on which the certificate was lodged with the clerk of the peace. *R. v. JJ. of Staffordshire*, 3 East, 150.

upon giving to the surveyor 10 (*d*) days' notice in writing of such appeal, together with a statement in writing of the grounds of such appeal, who is hereby required, within 48 hours after the receipt of such notice, to deliver a copy of the same to the party by whom he was required to apply to the justices to view the said highway; provided that in all cases where the said surveyor shall have been directed by the inhabitants in vestry assembled to apply to such justices as aforesaid, then the said surveyor shall not be required to deliver a copy of such notice to any party; provided also, that it shall not be lawful for the appellant to be heard in support of such appeal unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

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LXXXIX. And be it further enacted, that in case of such appeal the justices at the said quarter sessions shall, for the purpose of determining whether the proposed new highway is nearer or more commodious to the public, or whether the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or whether the said party appealing would be injured or aggrieved, impanel a jury of 12 disinterested men out of the persons returned to serve as jurymen at such quarter sessions (*e*); and if,

In case of  
appeal, jury  
at sessions  
to determine  
whether  
new high-  
way is  
nearer, &c.

(*d*) Notwithstanding this provision it is necessary to give the 14 days notice required by 12 & 13 Vict. c. 45, s. 1, which applies to such an appeal. *R. v. Maule*, 41 L. J. M. C. 47.

(*e*) It is only where the question raised by the appeal is—whether the new highway is nearer or more commodious than the other, or whether the way intended to be stopped up is unnecessary, that a jury is required. But if the grounds of appeal be for defects in the certificate, these being matter of law, it seems the court may decide them without impannelling a jury. Where, in an appeal, the grounds were of both kinds, and it was agreed, upon the appeal being called on, and there being no jury then in attend-

Part I.

after hearing the evidence produced before them, the said jury shall return a verdict that the proposed new highway is nearer or more commodious to the public, or that the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or that the party appealing would not be injured or aggrieved, then the said court of quarter sessions shall dismiss such appeal, and make the order herein mentioned for diverting and turning and stopping up such highway either entirely or subject as aforesaid, or for diverting, turning, and stopping up of such old highway, and purchasing the ground and soil for such new highway, or for stopping up such unnecessary highway, either entirely or subject as aforesaid; but if the said jury shall return a verdict that the proposed new highway is not nearer or not more commodious to the public, or that the highway so intended to be stopped up, either entirely or subject as aforesaid, is not unnecessary, or that the party appealing would be injured or aggrieved, then the said court of quarter sessions shall allow such appeal, and shall not make such order as aforesaid (a).

Costs to be  
awarded  
in appeal  
against  
stopping  
up, &c., high-  
way.

XC. And be it further enacted, that the court of quarter sessions is hereby authorized and required to award to the party giving or receiving notice of appeal such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall

ance, that the court should proceed to hear the objections to the certificate, and the trial of the other questions by the jury should be adjourned until the next day, when there would be a jury: the sessions on this hearing decided that the objections to the certificate were fatal, and thereupon allowed the appeal, without any trial by the jury: and the Court of Queen's Bench held that they were right; they had exercised a lawful power, and exercised it properly. *R. v. JJ. of Worcestershire*, 23 L. J. M. C. 113.

(a) See *Wright v. Frant*, 32 L. J. M. C. 204, and *R. v. Phillips*, 35 L. J. M. C. 211; L. R. 1 Q. B. 648.

Under sect. 108, *post*, the court may, if they think fit, state the facts specially for the opinion of the Q. B. Division of the High Court of Justice.

be tried or not (b), and such costs and expenses shall be paid by the surveyor or other party as aforesaid at whose instance the notice for diverting and turning, or stopping up the highway, either entirely or subject as aforesaid, shall have been given; and in case the said surveyor or other party as aforesaid shall not appear in support thereof, the said court of quarter sessions shall award the costs of the appellant to be paid by such surveyor or other party as aforesaid, and such costs shall be recoverable in the same manner as any penalties or forfeitures are recoverable under this Act (c). Chap. XI.

XCI. Provided always, and be it further enacted, that if no such appeal be made (d), or being made shall be dismissed as aforesaid, then the justices at the said quarter sessions shall make an order to divert and turn and to stop up such highway, either entirely or subject as aforesaid, or to divert, turn, and stop up such old If no appeal be made or if dismissed, sessions to make order for diverting, &c., and the old ways may be stopped.

(b) Where after receiving notice of appeal, the respondent gave notice of abandonment of the certificate, but the appeal was nevertheless entered and called on, and no one appearing, was struck out; but the appellant later in the day applied to have the appeal reinstated and to have his costs, it was held that he was entitled to do so. *R. v. JJ. of West Riding of Yorkshire*, 31 L. J. M. C. 271; 2 B. & S. 811.

(c) Sects. 101—103, *post*, pp. 158, 159. The sessions cannot make an order generally "for the payment of the costs incurred." The amount ought to be ascertained by the clerk of the peace during the sessions, and inserted in the order. *Sellwood v. Mount*, 1 Ad. & E. (N.S.) 726; 10 L. J. M. C. 121. *Ex parte Holloway*, 1 Dowl. P. C. 26. *R. v. Long*, 1 Q. B. 740. *R. v. Clark*, 5 Q. B. 887. *R. v. JJ. of Westmoreland*, 1 Dowl. & L. 178. See also *R. v. Mortlock*, 7 Q. B. 459, as to an order for costs, made at an adjourned sessions.

The non-payment of costs awarded by an order of quarter sessions under the above section is not an offence forming a subject for conviction under sects. 101—103, *post*, pp. 158, 159; but the payment of them may be enforced by a distress warrant under sect. 103, grounded directly upon the order of sessions. *Sellwood v. Mount*, 1 Ad. & E. (N.S.) 726.

(d) In *Rex v. JJ. of Worcestershire*, 2 B. & A. 228, it was held that the sessions had a right to inquire whether the order, though there was no appeal, was made by proper authority before they confirmed it. *Reg. v. Worcestershire*, 3 E. & B. 477. *R. v. Hervey*, 44 L. J. M. C. 1.

**Part I.**

New highway shall afterwards continue a public highway, &c.

highway, and to purchase the ground and soil for such new highway, or to stop up such unnecessary highway, either entirely or subject as aforesaid, by such ways and means, and (a) subject to such exceptions and conditions in all respects, as in this Act is mentioned in regard to highways to be widened; and the proceedings thereupon shall be binding and conclusive on all persons whomsoever; and the new highway so to be appropriated and set out shall be and for ever after continue a public highway to all intents and purposes whatsoever, but no old highway (except in the case of stopping up of such useless highway as herein is mentioned) shall be stopped until such new highway shall be completed and put into good condition and repair, and so certified (b) by two justices of the peace upon view thereof, which certificate shall be returned to the clerk of the peace, and by him enrolled amongst the records of the court of quarter sessions next after such order as aforesaid shall have been made pursuant to the directions hereinbefore contained (c).

Party liable to repair of old highways to repair new highways.

XCII. Provided always, and be it further enacted, that in every case in which a highway shall have been turned or diverted under the provisions of this Act, the parish or other party which was liable to the repair of the old highway shall be liable to the repair of the new highway, without any reference whatever to its parochial locality.

Provisions as to widening of a highway to extend to highways which persons

XCIII. And be it further enacted, that the powers and provisions in this Act contained with respect to the widening and enlarging, diverting, turning or stopping up any highway, shall be applicable to all highways

(a) See *R. v. Newmarket Rail. Co.*, 19 L. J. M. C. 241, note to sect. 82, *ante*, p. 134.

(b) See *De Ponthieu v. Pennyfeather*, 5 Taunt. 634.

(c) See *R. v. Newmarket Rail. Co.*, 19 L. J. M. C. 241, note to sect. 82, *ante*, p. 134.

which any person, bodies politic or corporate, is or are bound to repair by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever; and that when such last-mentioned highways are so widened or enlarged, turned or diverted, the same shall and may, by an order of the justices at a special sessions for the highways, be placed under the control and care of the surveyor of the parish in which such highways may be situate, and shall be from time to time thereafter repaired and kept in repair by the said parish: provided also, that the said highways so widened, enlarged, diverted, or turned shall be viewed by two justices of the peace, who shall make a report thereof to the justices at a special sessions for the highways; and such last-mentioned justices shall, by an order under their hands, fix the proportionate sum which shall be annually paid, or shall fix a certain sum to be paid, by such person, bodies politic or corporate, his or their heirs, successors, or assigns, to the said surveyors of the parish, in lieu of thereafter repairing the said part of the said old highway; and the order of the said last-mentioned justices shall be and continue binding on all such persons, bodies politic or corporate, their heirs, successors, or assigns; and in default of payment thereof the said surveyor shall proceed for the recovery of the same in the same manner as any penalties and forfeitures are recoverable under this Act.

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are bound to repair *ratione tenura*, &c.

Justices to fix annual or other amount payable by party previously bound to repair.

XCIV. And be it further enacted, that from and after the commencement of this Act, if any highway is out of repair (e) or is not well and sufficiently repaired and amended, and information thereof, on the oath of

Mode of proceeding before justices if highway is out of repair and liability is not disputed (d).

(d) See now H. Act, 1878, s. 10, Part II., Chap. 14.

(e) *Seemle*, that this section and the next apply only to roads that are admitted to be highways. *Reg. v. Farrar*, L. R. 1 Q. B. 558; 35 L. J. M. C. 210; see note to H. Act, 1862, s. 19, *post.*, as to the repairs of a highway within the jurisdiction of a highway board under the H. Act, 1862, s. 18.

**Part I.**

one credible witness, is given to any justice of the peace, it shall and may be lawful for such justice, and he is hereby authorized and required, to issue a summons requiring the surveyor of the parish or other person or body politic or corporate chargeable with such repairs, to appear before the justices at some special sessions (a) for the highways in the said summons mentioned, to be held within the division in which the said highway may be situate (b); and the said justices shall either appoint some competent person to view the same, and report thereon to the justices in special sessions assembled, on a certain day and place to be then and there fixed, at which the said surveyor of the highways or other party as aforesaid shall be directed to attend, or the said justices shall fix a day whereon they or any two of them shall attend to view the said highway; and if to the justices at such special sessions, on the day and at the place so fixed as aforesaid, it shall appear, either on the report of the said person so appointed by them to view, or on the view of such justices, that the said highway is not in a state of thorough and effectual repair, they the said justices at such last-mentioned special sessions shall convict (c) the said surveyor or other party liable to the repair of the said highway in any penalty not

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(a) As to justices' present jurisdiction at petty sessions, see H. Act, 1864, s. 46, *post*, Part II., Chap. 13.

(b) In any conviction or order under this section, when the same takes place or is made at a special sessions, it must appear that the highway in question is within the division for which the special sessions are holden; for otherwise it would not appear that the justices had jurisdiction. *R. v. Martin*, 13 L. J. M. C. 45; 2 Q. B. 1037. *R. v. Bolton*, 5 Jur. 1154. *R. v. Hickling*, 7 Q. B. 890. *R. v. Watford (Inhab.)* 4 Dowl. & L. 593. As to the justices' present jurisdiction at petty sessions, see H. Act, 1864, s. 46, *post*.

(c) Where an information is laid under this section, that a highway is out of repair, and the magistrates appoint a viewer, who reports that the highway is out of repair, they are not bound by that report, but may exercise their discretion whether they will convict the surveyor or not. *R. v. JJ. of Wilts*, 8 Dowl. 717. "The penalty is a fine upon the surveyor for his neglect of duty, and is paid out of the highway rate." COLEBRIDGE, J.

exceeding £5, and shall make an order on the said surveyor, or other person, or bodies politic or corporate liable to repair such highway, by which order they shall limit and appoint a time for the repairing of the same; and in default of such repairs being effectually made within the time so limited, the said surveyor, or such other person or body politic or corporate as aforesaid, shall forfeit and pay to some person to be named and appointed in a second order a sum of money to be therein stated, and which shall be equal in amount to the sum which the said justices shall, on the evidence produced before them, judge requisite for repairing such highway, which money shall be recoverable in the same manner as any forfeiture is recoverable under this Act, and such money when recovered shall be applied to the repair of such highway; and in case more parties than one are bound to repair any such highway, the said justices shall direct in their said order what proportion shall be paid by each of the said parties: provided, that if the said highway so out of repair is a part of the turnpike road (d), the said justices (e) shall (f) summon the treasurer or surveyor or other officer of such turnpike road, and the order herein directed to be made shall be made on such treasurer or surveyor or other officer as aforesaid, and the money therein stated shall be recoverable

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(d) See *The Bruton Turnpike Trustees v. Wincanton Highway Board*, 39 L. J. M. C. 155, where a question arose whether the trustees were entitled to pay arrears of interest before repairing roads.

(e) A single magistrate has no authority under this section to summon a surveyor of turnpike roads. *George v. Chambers*, 11 M. & W. 149. But two justices can summon the surveyor, or other officer of the trustees, in order to ascertain whether there are any funds which may be applied to the repair of the road: if there be, they may then make an order upon him to repair it: in case of disobedience, they may, under sect. 97, make an order for costs upon the trustees. See *R. v. JJ. of St. Albans*, 22 L. J. M. C. 142, and *R. v. JJ. of Hyde*, 21 L. J. M. C. 94; and see 4 & 5 Vict. c. 59, *post*, Part V, continued by various Acts to the present time.

(f) See *R. v. Trafford*, 5 E. & B. 967.



**Part I.** as aforesaid : provided nevertheless that the said justices shall not have power to make such order as aforesaid in any case where the duty or obligation of repairing the said highway comes in question.

**In what cases justices cannot interfere.**

**Mode of proceeding if obligation to repair is disputed.** XCV. And be it enacted, that if on the hearing of any such summons respecting the repair of any highway the duty or obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, or by any other party charged therewith, it shall then be lawful for such justices (b) and they are hereby required (c) to direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpœnaed, at the next assizes to be holden in and for the said county, or at the next general quarter sessions of the peace for the county,

(a) As to this section being in force in South Wales, see *R. v. James*, 3 B. & S. 901, *post*.

(b) Where the surveyor simply denies the liability to repair a road which is admitted to be a highway, it is imperative on the justice to order an indictment to be preferred. *R. v. JJ. of Surrey*, 21 L. J. M. C. 195. *R. v. Arnold*, 27 L. J. M. C. 92. But not so where it is denied to be a highway. *Ex parte Bartlett*, 30 L. J. M. C. 65. *R. v. Johnson*, 34 L. J. M. C. 85; 5 New Rep. 305. And where an indictment has been once preferred under this section, and a verdict of not guilty found, and a fresh summons being taken out against the surveyor, the justices declined to order another indictment, the court refused to compel them by *mandamus* to do it. *Ex parte Bennett*, 6 Jur. (n.s.) 1196. When it was necessary for the justices to act at special sessions, the order must have shown, on the face of it, that it was made at special sessions for the highways held within the division in which the road was situate. *R. v. Hickling*, 7 Q. B. 890. As to justices now having jurisdiction at petty sessions, see H. Act, 1864, s. 46.

(c) But where, on the hearing of such summons, the surveyors deny the duty of the parish to repair on the ground that it is not a highway, the justices cannot proceed to make an order under this section without making an inquiry whether the road is a highway (*Reg. v. Johnson*, 34 L. J. M. C. 85; 5 New Rep. 305); and if the liability is denied only on the ground that the road is not a highway, and the liability is admitted if the road be in fact a highway, and the denial of the road being a highway is made *bond fide*, the justices have no power to order an indictment to be preferred. *Reg. v. Farrer*, 35 L. J. M. C. 210; L. R. 1 Q. B. 558.

riding, division, or place wherein such highway shall be, against the inhabitants of the parish or the party to be named in such order, for suffering and permitting the said highway to be out of repair (*d*); and the costs of such prosecution shall be directed by the judge of assize before whom the said indictment is tried, or by the justices at such quarter sessions, to be paid out of the rate made and levied in pursuance of this Act in the parish in which such highway shall be situate (*e*);

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(*d*) As to the proceedings by indictment, see *Archbold's Criminal Pleading*. *Woolrych's Crim. Law*, pp. 1251—1273. 1 *Russ. on Crimes*, by Prentice, p. 491.

(*e*) If the highway indicted be not within a highway district (see H. Act, 1862, s. 19), it is imperative upon the judge or sessions to grant these costs, even although the defendant be acquitted (*R. v. Heanor*, 13 L. J. M. C. 144; 6 Q. B. 745), provided the way be a public highway, and proved at the trial to be so (*R. v. Down Holland*, 15 L. J. M. C. 25), and the liability to repair be the matter in dispute. *R. v. Heanor*, 14 L. J. M. C. 38, unless it appear to the court that the defence is frivolous or vexatious, in which case the court may award costs to the prosecutor to be paid by the person indicted; s. 98, *post*, p. 157.

Where the defendant pleads guilty an order for costs may be made under this section. *R. v. Haslemere*, 32 L. J. M. C. 30; 3 B. & S. 313. An indictment, however, is not considered to have been tried if the jury are discharged for disagreement, and no costs can be given. *R. v. Heytesbury*, 27 J. P. 308.

Where the defendant is acquitted on the ground that the road is not a public highway (*R. v. Chedworth*, 9 C. & P. 285; *R. v. Paul*, 2 M. & Rob. 307), or that it is not the highway set out in the order of justices (*R. v. Fifehead*, 3 Cox, C. C. 59; *R. v. Lee*, 45 L. J. M. C. 54), the judge has no jurisdiction to certify under this section (*R. v. Hickling*, 7 Q. B. 890). Where the prosecution has been at sessions, or in the crown court at the assizes, care should be taken to have the costs taxed, and the amount inserted in the order, during the sessions or assizes at which the indictment is tried. It should also be stated out of what fund they are to be paid (*R. v. Watford*, 4 D. & L. 593; *R. v. Clark*, 5 Q. B. 887). But where an indictment preferred under this section by order of justices has been removed by *certiorari* at the instance of the defendants, the judge who tries it, not sitting as a judge of assize, but a judge of Q. B., and representing that court, cannot direct that the costs of the prosecution shall be paid out of the rates. The costs in such a case are provided for under 5 W. & M. c. 11. *Reg. v. Ipstones*, 37 L. J. M. C. 37; L. R. 3 Q. B. 216.

If the defendant pleads guilty costs cannot be awarded under 5 & 6 W. & M. c. 11: *R. v. Denton (township of)*, 34 L. J. M. C.

**Part I.** provided nevertheless, that it shall be lawful for the party against whom such indictment shall be so preferred at the quarter sessions as aforesaid to remove such indictment by *certiorari* or otherwise into H. M.'s Court of King's Bench (a).

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13. As to costs after removal by *certiorari*, see 1 *Russ. on Crimes*, by Prentice, p. 508. *R. v. East Stoke*, 29 J. P. 597.

Where, by an order of justices at a special session for the highways, an indictment was preferred at the quarter sessions against the parish for the non-repair of a highway; the parish pleaded, and the jury found, that the occupier of farm A. was bound to repair it *ratione tenuræ*; the prosecutor then applied for his costs, but the sessions refused to give them, on the ground that G., one of the justices who made the order for preferring the indictment, was the owner of farm A.; upon an application for a *mandamus* to the sessions to allow the costs, it appeared that the surveyor, when before the special sessions, merely denied the liability of his parish, without suggesting who was liable, and thereupon G., and two other justices made the order; and WIGHTMAN, J., granted the writ, for G. when he made the order was not interested, although he became so afterwards when the parish had pleaded, and the prosecutor therefore was entitled to his costs. *R. v. JJ. of Surrey*, 21 L. J. M. C. 195,

The words "out of the rate made and levied, &c.," comprehend not only rates in existence at the time of making the order, but the highway rate in general; and if there be not sufficient funds in the hands of the surveyors at the time, they must make a rate for the purpose. And the order binds not only the surveyors in office, but their successors also, until the costs be paid. The costs cannot be levied by distress either as "penalties or forfeitures," or "costs and charges" under sect. 103, but a *mandamus* will issue to compel the surveyor to take the proper steps for levying and paying them. *R. v. Eyton*, 3 E. & B. 390.

Compare with the above section H. Act, 1862, s. 19, in which it is enacted, that, in a similar prosecution, where the road indicted is within a highway district, "the costs of the prosecution shall be paid by such party to the proceedings as the court shall direct; and that, if directed to be paid by the parish, they shall be deemed to be expenses incurred by such parish in keeping its highways in repair, and shall be paid accordingly."

(a) The question of liability to repair may be raised on a plea of not guilty, so as to entitle the parish to remove on indictment by *certiorari*. *R. v. Taunton St. Mary*, 3 M. & S. 465. Though the words of the section are confined to indictments preferred at quarter sessions only, an indictment found at the assizes also may be removed by *certiorari*. *R. v. Sandon*, 3 E. & B. 547. As to the removal of indictments by *certiorari*, see 16 & 17 Vict. c. 30, ss. 4-8. As to costs under this Act, see *R. v. Oastler*, 43 L. J. Q. B. 42.

Where a grand jury had ignored a bill of indictment against a

**XCVI.** And be it further enacted, that no fine, issue, **Chap. XI.**  
 penalty, or forfeiture for not repairing the highway, or **Fines, penal-**  
 not appearing to any indictment for not repairing the **ties, and**  
 same, shall hereafter be returned into the Court of **forfeitures,**  
 Exchequer or other court, but shall be levied by and **how to be**  
 paid into the hands of such person residing in or near **levied and**  
 the parish where the road shall lie, as the justices or **applied.**  
 court imposing such fines, issues, penalties, or for-  
 feitures shall order and direct, to be applied towards  
 the repair and amendment of such highway (b); and  
 the person so ordered to receive such fine shall and is  
 hereby required to receive, apply, and account for the  
 same according to the direction of such justices or  
 court, or in default thereof shall forfeit double the sum  
 received; and if any fine, issue, penalty, or forfeiture  
 to be imposed for not repairing the highway, or not  
 appearing as aforesaid, shall hereafter be levied on any  
 inhabitant of such parish, township, or place, then such  
 inhabitant shall and may make his complaint to the  
 justices at a special sessions for the highways; and the  
 said justices are hereby empowered and authorized by  
 warrant under their hands, to make an order on the  
 surveyor of the parish for payment of the same out of  
 the money receivable by him for the highway rate, and  
 shall within two months next after service of the said

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parish for non-repair of a highway, some of the grand jurors being landowners in the parish, and taking part in the discussion whether the bill should be found, the court granted a criminal information against the inhabitants of the parish for the non-repair of the highway. *R. v. Upton St. Leonards*, 16 L. J. M. C. 84; 10 Q. B. 827.

(b) The fine can only be applied "towards the repair and amendment of such highway." If, therefore, after conviction and order, and before payment of the fine, the defendants effectually repair the road, they are entitled to a stay of further proceedings, and the prosecutor cannot claim the fine on behalf of third parties for repairs done previously to the conviction. *R. v. Barnard's Castle*, 10 L. J. M. C. 53. The repairs, however, must be well and effectually done, or the court will impose a fine of sufficient amount to put the road into a substantial state of repair. *R. v. Clazby*, 24 L. J. Q. B. 223. As to apportioning fine when road a turnpike road, see *ante*, p. 33.

**Part I.** order on him pay unto such inhabitant the money therein mentioned (a).

Justices empowered to award costs to be paid by defendant, if convicted (b) and to him if information, &c., is withdrawn or dismissed.  
\* Sic.

\* Sic.

XCVII. And be it further enacted, that if any surveyor or other person shall be summoned before any justice\* to answer any information or complaint exhibited or made against him touching or concerning any offence committed or alleged to have been committed by such surveyor or other person against the provisions of this Act, or for any supposed neglect of duty, in case such surveyor or other person be convicted thereof, such justice shall be authorized and empowered to order the payment by such surveyor or other person of all costs or proceedings against him; but in case such information or complaint shall afterwards be withdrawn or quashed or dismissed, or if the defendant shall be acquitted of the offence or neglect of duty charged against him, it shall be lawful for such justices\* to order and award that the person exhibiting or making such information or complaint shall pay to the defendant all such costs as to such justice shall seem reasonable; and in default of immediate payment of the sum so awarded, it shall be lawful for such justices to cause the same to be levied by distress and sale of the goods and chattels of the person ordered to pay the same, together with the costs of such distress and sale; and if goods and chattels of such person sufficient to answer the sum so awarded, with such costs as aforesaid, cannot be found, it shall be lawful for such justices to commit such person to the common gaol or house of correction, there to be kept to hard labour, for any time not exceeding one calendar month, unless the sum so

(a) An application must be made within a reasonable time; and if refused, steps taken to enforce it by *mandamus*. The Court of Queen's Bench refused to interfere where eight years had been suffered to elapse, though applications had been from time to time made to the magistrates and refused. *R. v. JJ. of Lancashire*, 12 East. 366. *R. v. Townsend*, 2 Doug. 420.

(b) See *George v. Chambers*, 11 M. & W. 155.

awarded, together with all costs and expenses, shall be Chap. XI.  
sooner paid and satisfied.

XCVIII. And be it further enacted, that it shall and Court may  
may be lawful for the court before whom any indictment shall be preferred for not repairing highways, to award costs to the prosecutor, to be paid by the person so indicted, if it shall appear to the said court that the defence made to such indictment was frivolous or vexatious (c).

XCIX. And be it further enacted, that from and No present-  
after the commencement of this Act it shall not be ment against  
lawful to take or commence any legal proceeding, by inhabitants  
presentment, against the inhabitants of any parish, or for highway  
other person, on account of any highway or turnpike being out of  
road being out of repair.

C. Repealed by 37 & 38 Vict. c. 35, the Statute Law Inhabitants,  
Rev. Act, 1874 (d). &c., may give  
evidence.

(c) Where the judge certified on the back of the record that the defence was frivolous, without also awarding costs in express terms, the court held that this certificate was in effect an awarding of costs, and sufficient for the purpose. *R. v. Clifton*, 6 T. R. 344. And where such a certificate is given, the prosecutor shall have his costs notwithstanding the defendants may have obtained a rule to arrest the judgment. *R. v. St. John, Margate*, 6 M. & S. 130.

The word "preferred" may mean carried on in any stage. Therefore, where an indictment is removed by *certiorari*, by the prosecutor into the Q. B. Division of the High Court of Justice, and tried there, the judge at *nisi prius* may, under this section, certify that the defence was frivolous, and order that the defendant pay costs to the prosecutor. *R. v. Pembridge*, 3 Q. B. 901. He may also certify for a special jury. *Id.* Where an indictment has been removed by *certiorari*, and the judge under this section, has at the trial awarded costs to the prosecutor, the court will, notwithstanding sect. 103, enforce obedience to the order for costs. *R. v. Pembridge*, 3 Q. B. 901.

But where an indictment for non-repair has been preferred, and the defendants have pleaded guilty, there is no power to award costs under this section. *Reg. v. Denton*, 34 L. J. M. C. 133.

(d) By 40 & 41 Vict. c. 14, s. 1. "On the trial of any indictment or other proceeding for the non-repair of any public high-

## Part I.

Justices may proceed by summons in the recovery of penalties (a).

CI. And be it further enacted, that in all cases in which any penalty or forfeiture is recoverable before justices of the peace under this Act, it shall and may be lawful for any justice to whom complaint (b) shall be made of any such offence to summon the party complained against before any two justices, and on such summons the said two justices (c) may hear and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing was exhibited (d).

Compelling witnesses to attend and give evidence (e).

CII. And be it further enacted, that if any person, after having been paid or tendered a reasonable sum of money for his costs, charges, and expenses, shall be summoned as a witness to give evidence before any

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way or bridge, or for a nuisance to any public highway, river, or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence."

(a) As to the Summary Jurisdiction Acts applying to proceedings before justices, see *ante*, p. 66.

(b) Within what time complaint should be made, see *ante*, p. 66.

(c) As to the jurisdiction of justices in a case in which a party charged with a nuisance denies the road to be a highway, claiming the soil subject to a private right of way, see *Williams v. Adams*, 31 L. J. M. C. 109, note to sect. 73, *ante*, p. 127.

(d) See the forms of information, summons, conviction, distress warrant, and the return thereto, and of a commitment for want of distress, Schedule to this Act No. 20—25. To be had of the publishers of this work.

(e) When witness out of the jurisdiction, see Summary Jurisdiction Act, 1879, s. 36.

## Chap. XI.

justices of the peace touching any matter or fact contained in any information or complaint for any offence against this Act, either on the part of the prosecutor or the person accused, and shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his refusal or neglect, or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges, and expenses,) refuse to be examined upon oath and give evidence before such justice of the peace, then and in either of such cases such persons shall forfeit for every such offence any sum not exceeding £5.

CIII. And be it further enacted, that all penalties and forfeitures by this Act inflicted or authorized to be imposed for any offence against the same, and all balances due from a surveyor (*g*), and all costs and charges to be allowed and ordered by the authority of this Act, (the manner of levying, recovering, and applying of which is not hereby otherwise particularly directed,) (*h*) shall, upon proof and conviction of the

Forfeitures,  
costs, and  
charges may  
be levied by  
distress and  
sale (*f*).

(*f*) As to the Summary Jurisdiction Acts applying, see *ante*, p. 66; and see sect. 21 of that Act which contains special provisions as to warrants of commitment for non-payment of sums of money, and as to warrants of distress; see sect. 9 which contains a provision as to costs in the case of small fines; see sect. 43 as to procedure on the execution of distress warrants.

(*g*) *Collier v. Kilham*, 21 L. J. Q. B. 65.

(*h*) See *R. v. Eyton*, 3 E. & B., note to sect. 95, *ante*, p. 154. The non-payment of costs awarded by an order of quarter sessions, on the trial of an appeal against the stoppage of a highway, under sect. 90, is not an offence forming a subject for conviction under sects. 101, 103, but the non-payment of them may be enforced by distress warrant issued by two justices under sect. 103, grounded directly upon the order of sessions. *Sellwood v. Mount*, 10 L. J. M. C. 121; 1 A. & E. (N.S.) 727. And per Lord DENMAN, C. J.; "Sect. 103 must be read *reddendo singula singulis*, and the true construction of it is, that the justices shall issue their warrant 'upon a conviction,' where there has been an offence for which a penalty or forfeiture is inflicted or authorized to be imposed: and 'upon order made as aforesaid,' when costs have been awarded



**Part I.** offences (a) respectively before any two or more justices, either by the confession of the party offending, or by the oath of any credible witness or witnesses, (which oath such justices are in every case hereby fully authorized to administer), or upon order made as aforesaid, be levied, together with the costs attending the information, summons, and conviction, by distress and sale of the goods and chattels of the offender or person liable or ordered to pay the same respectively, by warrant, under the hands of two or more justices before whom the party may have been convicted (which warrant such justices are hereby empowered and required to grant); and the overplus (if any), after such penalties, forfeitures, and fines, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justices as aforesaid to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security, to the satisfaction of such justices as aforesaid, for his or their appearance before such justices on such day or days as shall be appointed for the return of such warrant of distress, such day not being later than 7 days from the time of taking any such security, and which security the said justices as aforesaid are hereby empowered to take by way of recognizance or otherwise; or in case it shall appear to the satisfaction of such justices, either by the confession of the offender

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and not paid; notwithstanding the words 'under the hands of two or more justices before whom the party may have been convicted.'

(a) See *Sellwood v. Mount*, 1 A. & E. (N.S.) 727; 10 L. J. M. C. 121, *ante*, p. 147, note to sect. 90; *Lock v. Sellwood*, *Id.*

or otherwise, that he hath not goods or chattels within the jurisdiction of such justices sufficient whereon to levy all such penalties and forfeitures, costs and charges, such justices may, at their discretion, without issuing any warrant of distress, commit the offender for such period of time, and in such and like manner, as if a warrant of distress had been issued, and *nulla bona* returned thereon; but if a warrant of distress shall be issued, and upon the return thereof it shall appear that no sufficient distress can be had whereupon to levy the said penalty, forfeiture, or fine, and costs and expenses aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such justices, upon the confession of the offender, or otherwise, that he hath not sufficient goods and chattels whereupon such penalty, forfeiture, or fine, costs and expenses, could be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant, but in such case such justices are hereby required, by warrant under their hands, to cause such offender or offenders to be committed to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to be kept to hard labour for any term not exceeding 3 calendar months (b), unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the penalties and forfeitures, when so levied, shall be paid, the one half to the informer, and the other half to the surveyor of the parish where such offence, neglect, or default shall happen, to be applied towards the repair of the highways thereof (c), unless otherwise directed by this Act; but in case the surveyor shall be the informer, then

Application  
of penalties.

(b) See now as to the period of imprisonment, &c., Summary Jurisdiction Act, 1879, ss. 4, 5.

(c) See 20 & 21 Vict. c. 31, s. 12, an enactment for protecting from nuisances town and village greens, &c.

**Part I.** the whole shall be applied towards the repair of such highway.

Satisfaction recoverable for special damage; but distress not to be deemed unlawful for want of form in the proceedings.

Plaintiff not to recover for irregularity if tender of amends be made.

CIV. And be it further enacted, that where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any default or want of form in any proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done in making the distress, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case: provided always, that no plaintiff shall recover in any action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made by or on behalf of the party who shall have committed or caused to be committed any such irregularity, trespass, or wrongful proceedings, before such action brought; and in case no such tender shall have been made, it shall and may be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit, whereupon such proceedings or orders and judgment shall be had, made, and given in and by such court as in other actions where the defendant is allowed to pay money into court.

Appeal may be made to quarter sessions against rate, &c. (a).

CV. Provided also, and be it further enacted, that if any person shall think himself aggrieved (b) by any rate made under or in pursuance of this Act, or by any order, conviction, judgment, or determination made,

(a) An appeal also lies under Summary Jurisdiction Act, 1879, s. 32, against a conviction or order, see *ante*, p. 69. See also H. Act, 1862, s. 47.

(b) See sect. 88, *ante*, p. 144, and note thereto.

or by any matter or thing done, by any justice or other person in pursuance of this Act, and for which no particular method of relief hath been already appointed, such person may appeal (c) to the justices at the next general or quarter sessions of the peace to be held for the county, division, riding, or place wherein the cause of such complaint shall arise, such appellant first giving or causing to be given to the surveyor or surveyors, or to such justice or other person by whose act such person shall think himself aggrieved, notice in writing of his intention to bring such appeal, together with a statement in writing of the grounds of such appeal, within 14 days after such rate shall have been made, or cause of complaint shall have arisen (d), and within 4 days after such notice entering into a recognizance before some justice, with two sufficient sureties, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such general or quarter sessions; and such justices, upon hearing and finally determining the matter of such appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and

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(c) See *R. v. JJ. of Leicestershire*, 8 E. & B. 557.

An appeal lies against the decision of special sessions as to the utility of a highway proposed to be dedicated to the public. See sect. 23.

It was held, under a similar provision in 13 Geo. 3, c. 78, s. 80, that an inhabitant might appeal against the appointment of surveyors, as being a thing done in pursuance of the Act. *R. v. JJ. of St. Albans*, 3 B. & C. 698.

(d) The notice and grounds of appeal must be served on the person or persons by whose act the appellant deems himself aggrieved: in an appeal against a conviction, on both the magistrates who signed it (*R. v. JJ. of Bedfordshire*, 11 Ad. & El. 134), in an appeal against a rate, on the surveyors. It is not necessary that the notice and grounds should be served personally on the respondent; it is sufficient to leave it for him at his place of residence. *R. v. JJ. of N. R. Yorkshire*, 14 L. J. M. C. 91.

Where the appeal was against a warrant of distress, it was held that the execution of the warrant might be considered the cause of complaint. *R. v. JJ. of Devon*, 1 M. & S. 411.

**Part I.** their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever: provided nevertheless, that in case there shall not be time to give such notice and enter into such recognizance as aforesaid before the next sessions to be holden after the making of any rate or the cause of complaint shall have arisen, then and in every such case such appeal may be made to the next following sessions, and shall be then heard and determined: provided also, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

Provisions of  
41 Geo. 3,  
c. 23, applic-  
able to this  
Act.

CVI. And be it further enacted, that in all cases of appeal against the rate or assessment made in pursuance of this Act, the several provisions and enactments contained in 41 Geo. 3, intituled "An Act for the better Collection of the Rates made for the Relief of the Poor," shall be applicable thereto, as if the same had been repeated and re-enacted in this Act with respect to such appeals (a).

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(a) Works on the poor laws containing this statute are always easy of access, and it is not therefore thought necessary to print it *in extenso*. The following, however, is a summary of the provisions of it:—Sect. 1. On appeal against any poor rate, the quarter sessions may amend it without quashing it; or, if necessary to grant relief, may quash the rate, but the sum assessed may, notwithstanding, be levied and taken as payment on account of the next effective rate. Sect. 2. Notice of appeal not to prevent distress being made for the recovery of the rate, provided the sum be not greater than that assessed in the last effective rate. Sect. 3. Quarter sessions having ordered a rate to be quashed, may order the sum charged on any person not to be paid, and stop proceedings for the recovery thereof, &c. Sect. 4. Notice of appeal to be given to the churchwardens and overseers of the poor, &c. Sect. 5. Appeals may be decided, if the parties consent, although no notice be given. Sect. 6. Persons appealing against any rate, shall give notice not only to the churchwardens, &c., but also to the persons interested, &c. Sect. 7. The rate shall be recovered as

CVII. Provided always, and be it further enacted, Chap. XI.  
 that no rate, nor any proceeding to be had touching the Rates and  
 conviction of any offender against this Act, or any order proceedings  
 made, or any other matter or thing done or transacted not to be  
 in or relative to the execution of this Act, shall be quashed for  
 vacated or quashed for want of form; or be removed or want of  
 removable (except as herein mentioned) by *certiorari*, form.  
 or any other writ or process whatsoever, into any of  
 H. M.'s courts of record at Westminster.

CVIII. And be it further enacted, that in any case In case of  
 of appeal the court of quarter sessions before whom appeal sessions  
 the same is heard and determined may, if they think fit, may grant  
 state the facts specially for the determination of H. M.'s a special  
 Court of King's Bench thereon, in which case it shall case.  
 be lawful to remove the proceedings, by writ of  
*certiorari* or otherwise, into the said Court of King's  
 Bench (b).

CIX. And be it further enacted, that no action or Limitation of  
 suit shall be commenced against any person for any actions.  
 thing done in pursuance of or under the authority of  
 this Act until 21 (c) days' notice has been given thereof  
 in writing to the justice, surveyor, or person against  
 whom such action is intended to be brought (d), nor  
 after sufficient satisfaction or tender of satisfaction has  
 been made to the party aggrieved, nor after 3 calendar

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altered by quarter sessions. Sect. 8. If on appeal the name of  
 any person be struck out, or any sum lowered, and it appear that  
 money has been improperly paid, the quarter sessions may order  
 the money to be repaid.

(b) See also 12 & 13 Vict. c. 45 ; 20 & 21 Vict. c. 43. As to  
 a writ of *certiorari* not being now necessary, see Sum. Jurisdiction,  
 Act, 1879, s. 40.

(c) Notice of action must now be given one calendar month at  
 least before action commenced. 5 & 6 Vict. c. 97, s. 4.

(d) A person who has been appointed surveyor, but informally,  
 is entitled to the protection of this section, if he acts in the  
 supposed exercise of his duty. *Huggins v. Wayday*, 15 M. & W.  
 357.

**Part I.**

Defendant  
may plead  
the general  
issue.

Costs.

months next after the fact committed (a) for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other county or place; and the defendant in such action or suit may plead the general issue, and give this Act and every special matter in evidence at any trial which shall be had thereupon (b): and if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such action or suit was brought before 21 days' notice thereof given as aforesaid, or that sufficient satisfaction was made or tendered as aforesaid (c), or if any action or suit shall not be commenced within the time before limited, or shall be laid in any other county than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if, upon any demurrer in such action, judgment shall be given for

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So where a board of highways ordered their surveyor to open a certain road to the public by removing the obstruction therefrom, believing it to be a public footway, it was held, in an action of trespass against the surveyor and certain members of the board, that they were entitled to notice of action, it being admitted that they acted *bonâ fide*. *Smith v. Hopper*, 16 L. J. Q. B. 93.

Where an action was brought against a surveyor for allowing a heap of gravel to remain upon a highway, which heap he had notice to remove as being an obstruction to the road, and a nuisance, but he failed to do so, by reason whereof a carriage of the plaintiff was driven against the gravel, and overturned: it was holden that this was a case in which a notice of action should be given to the defendant, as being for a wrongful act done by him in his official capacity. *Davis v. Curling*, 15 L. J. Q. B. 56.

This part of the section does not impliedly repeal the first section of 24 Geo. 2, c. 44, which entitles a justice to one calendar month's notice of the cause of action, for anything by him done in the execution of his office. *Riz v. Borton*, 12 A. & E. 470.

(a) See *Wordsworth v. Harley*, 1 B. & Ad. 391; *Roberts v. Read*, 16 East, 215; *Sutton v. Clark*, 6 Taunt. 29.

(b) See *Calvert v. Moggs*, 10 A. & E. 632.

(c) See *Peters v. Clarkson*, 7 M. & Gr. 548.

the defendant therein, then and in any of the cases aforesaid such defendant shall have costs as between attorney and client (*d*), and shall have such remedy for recovering the same as any defendant may have for his or her costs in any other case by law. Chap. XI.

CX. And be it further enacted, that the several fees hereafter limited and expressed, and no others, shall be taken by the clerk of the peace, clerk to the justices, or others, for their several respective services in the execution of this Act; (that is to say,) the sum of sixpence for every information; the sum of 1*s.* for every summons or warrant, and sixpence for the service thereof; the sum of sixpence for every notice, and sixpence for the service thereof; the sum of 1*s.* for every order, and sixpence for the service thereof; the sum of 2*s.* for every warrant of distress; the sum of 1*s.* for every appointment; and the sum of 2*s.* for every conviction: provided always, that in no place regulated by a local Act of Parliament, when the amount of the fees to be taken by the clerk to the justices, or others, in any proceeding for the recovery of any rate, shall be less than the fees hereinbefore mentioned, shall it be lawful for such clerk to the justices or others to demand or take a greater fee for any similar proceeding under this Act than the fee which may be mentioned or directed to be taken by such local Act. Amount of fees.

CXI. And be it further enacted, that if the inhabitants of any parish shall agree at a vestry to defend any indictment found against any such parish, or to appeal against any order made by or proceeding of any justice of the peace in the execution of any powers given by this Act, or to defend any appeal, it shall and may be Expenses for defending prosecutions agreed upon at a vestry meeting, how to be paid.

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(*d*) Now such full and reasonable indemnity as to all costs, charges, and expenses incurred in and about the action as shall be taxed by the proper officer. See 5 & 6 Vict. c. 97, s. 2.



**Part I.**

lawful for the surveyor of such parish to charge in his account the reasonable expenses incurred in defending such prosecution, or prosecuting or defending such appeal, after the same shall have been agreed to by such inhabitants at a vestry or public meeting as aforesaid, and (a) allowed by 2 justices of the peace within the division where such highway shall be; which expenses, when so agreed to or allowed, shall be paid by such parish out of the fines, forfeitures, payments, and rates authorized to be collected and raised by virtue of this Act: provided nevertheless, that if the money so collected and raised is not sufficient to defray the expenses of repairing the highways in the said parish, as well as of defending such prosecution, or prosecuting or defending such appeal as aforesaid, the said surveyor is hereby authorized to make, collect, and levy an additional rate in the same manner as the rate by this Act is authorized to be made for the repair of the highway (b).

Limiting  
powers of  
57 Geo. 3,  
c. 92.

CXII. And be it further enacted, that nothing in this Act contained shall be construed to abridge, repeal, alter, amend, or interfere with the powers and provisions contained in an Act (57 Geo. 3, c. 29, Metropolitan Streets, &c.), or the powers and provisions contained in any Act relating to any particular parish or place for any of the purposes in this Act mentioned.

Not to extend  
to turnpike  
roads or to  
roads under  
local Acts.

CXIII. Provided always, and be it further enacted, that nothing in this Act contained shall apply to any turnpike roads, except where expressly mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchways, or pave-

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(a) The word "and" is, by mistake put for "or;" and the surveyor may charge such expenses after they have been agreed to at a vestry, or allowed by two justices. *Townsend v. Read*, 30 L. J. M. C. 245.

(b) See *R. v. Fowler*, 1 Ad. & E. 836.

ments, which now are or may hereafter be paved, repaired, or cleansed, broken up or diverted, under or by virtue of the provisions of any local or personal Act or Acts of parliament (c). Chap. XI.

CXIV. Provided always, and be it further enacted, that nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of Oxford or Cambridge, or any of the powers vested by charter or otherwise in the chancellors, masters, and scholars, and their successors, of the said universities. Not to affect the universities;

CXV. Provided always, and be it further enacted, that nothing in this Act contained shall extend to alter or in any manner affect the city of London and the liberties thereof, or the rights, interests, privileges, franchises, or authorities of the mayor and commonalty and citizens of the city of London, or their successors, or the lord mayor and aldermen of the said city, or the lord mayor of the said city for the time being, as conservator of the River Thames or otherwise, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at the time of making this Act the said mayor and commonalty and citizens, the said lord mayor and aldermen of the said city, or the said lord mayor for the time being, as conservator of the River Thames or otherwise, did or might lawfully nor the rights and liberties of the city of London;

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(c) In *R. v. Paynter*, 18 L. J. M. C. 169; 13 Q. B. 399, it was held, that this section did not exempt from highway rate a bridge paved, repaired, &c., under a local Act. Per PATTESON, J.—“The true meaning of the clause is, I think, that nothing in the Act shall apply in respect of paving, repairing, &c., any roads, &c., which are paved, &c., under a local Act.” But where a highway lay within that portion of a parish which was under a local Improvement Act, it was held, that by reason of this section the provisions of the H. Act, 1835, ss. 84, 85, could not be made use of for diverting it; although under the local Act no power was given to divert or stop any of the highways, and that a certificate of justices under that section was made without jurisdiction. *Wright v. Frant*, 32 L. J. M. C. 204, *ante*, p. 138.

**Part I.**

claim, use, or exercise by any Act of Parliament or otherwise, or to vary or alter any of the provisions or regulations thereby made, directed, or provided, within the said city of London and the liberties thereof, anything herein contained to the contrary thereof in anywise notwithstanding.

nor the Act  
1 Geo. 4, c. 7.

CXVI. Provided always, and be it further enacted, that nothing in this Act contained shall extend to alter or in any manner affect the provisions of 1 Geo. 4, intituled "An Act for regulating the Repairs of Bridges in the County of Montgomery," so far as the same relates to the repairs of so much of the highways as lie next adjoining to any ends of any bridges within the said county of Montgomery, the repairs of which have already been made chargeable upon the rates of the said county under the provisions of the said recited Act.

Powers of  
commis-  
sioners of  
sewers not  
abridged.

CXVII. Provided always, and be it further enacted, that nothing in this Act contained shall extend to or be deemed or construed to extend to alter, affect, restrain, or abridge the powers or authorities given to the commissioners of sewers by any Act of Parliament whatsoever, or to vary or alter any of the provisions or regulations thereby made, directed or provided, anything herein contained to the contrary thereof in anywise notwithstanding.

Concerning  
the forms of  
proceedings.

CXVIII. And be it further enacted, that the forms of proceedings relative to the several matters contained in this Act, which are set forth and expressed in the schedule hereunto annexed, shall (a) be used upon all occasions, with such additions or variations only as may

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(a) It was held in one case that the enactment of 13 Geo. 3, c. 78, s. 69, which was similar to the above, was imperative and not directory only. *Davison v. Gill*, 1 East. 64. But according to *R. v. Casson*, 3 D. & R. 40, such an enactment is only directory.

be necessary to adapt them to the particular exigencies of the case; and that no objection shall be made or advantage taken for want of form in any such proceedings by any person whomsoever. Chap. XI.

CXIX. And be it further enacted, that this Act shall commence and take effect from and after the 20th day of March, 1836. Commence-  
ment of Act.

CXX. Repealed by Stat. Law Rev. Act, 1874.

Act may be  
altered this  
session.

The SCHEDULE (stating the Forms) to which this Act refers.

No. 1.

*Notice to Person of his having been elected Surveyor.*

A. B. take notice, that you were, at a meeting held at [insert the name of the parish, &c.] on the            day of            elected and chosen surveyor [or one of the surveyors] of the highways for the said [parish, &c.] for the year ensuing.

Dated the            day of            .

C. D. Chairman.

To A. B. of            .

No. 2.

*Appointment of Surveyor with Salary.*

At a meeting of the inhabitants of            in vestry assembled, at            on the            day of            , A. B. was nominated, elected, and appointed as surveyor of such parish, for the purpose of carrying into execution the provisions of an Act passed in the fifth and sixth years of the reign of King William the Fourth, intituled "An Act," &c. [here set out title of Act], for the year ensuing; and the salary to be allowed to the said A. B. was fixed at the sum of            , payable on            .

Dated the            day of            .

C. D. Chairman.

No. 3.

*Appointment of Surveyor by Justices.*

to wit. } At a special sessions for the highways held at  
          }            , in the division, &c., of            , by justices  
of the peace for the said county, acting within the said division,  
&c., on the            day of            .

**Part I.**

Whereas it hath appeared to us the said justices, on the oath of *A. B.*, an inhabitant of the parish of \_\_\_\_\_, that the inhabitants of the said parish in vestry assembled have neglected or refused to nominate and elect a surveyor in manner and for the purposes mentioned in a certain Act made and passed in the fifth and sixth years of the reign of King William the Fourth, intitled "An Act, &c. &c. for the better regulation of the highways in Great Britain," and that the surveyor appointed by the inhabitants of the said parish as aforesaid, has ceased to possess the qualifications required by the said Act, or has become disqualified, or has neglected to act, or has refused to carry into operation the duties imposed upon him by the said Act; we do therefore hereby appoint you *C. D.*, surveyor for such parish for the year ensuing [or for the space of \_\_\_\_\_], with the salary of \_\_\_\_\_ for your trouble; and you the said *C. D.* are lawfully and truly to execute the office of surveyor according to the directions of the said statute.

Given under our hands the day and year first above mentioned.

To *C. D.*

*E. F.*  
*G. H.*

## No. 4.

*Form of Highway Rate.*

| Names of Occupiers or Persons rated | Description of the Premises and Property rated. | Annual Value.    | Sums assessed at 10d. in the Pound. |
|-------------------------------------|-------------------------------------------------|------------------|-------------------------------------|
| <i>A. B.</i> ...                    | House and Garden... ..                          | £ s. d.<br>5 0 0 | £ s. d.<br>0 4 8                    |
| <i>C. D.</i> ...                    | A Farmhouse, Lands, and Buildings ... ..        | 100 0 0          | 4 3 4                               |
| <i>E. F.</i> ...<br>and so forth.   | A Warehouse ... ..                              | 20 0 0           | 0 16 8                              |

*A. B.* } Surveyor (or surveyors) of the  
*C. D.* } parish of \_\_\_\_\_.

Chap. XI.

| No. 5 (a).<br><i>Weekly Account of Money Expended on the Highways of the Parish of</i><br><i>One thousand eight hundred and</i> |                      |                 |                     |                                     |       |         |                                                                                                |         |  |
|---------------------------------------------------------------------------------------------------------------------------------|----------------------|-----------------|---------------------|-------------------------------------|-------|---------|------------------------------------------------------------------------------------------------|---------|--|
| , from the day of                                                                                                               |                      |                 |                     |                                     |       |         |                                                                                                |         |  |
| Day<br>Labour,<br>and when<br>performed.                                                                                        | Labourers'<br>Names. | No. of<br>Days. | Rate<br>per<br>Day. | Team<br>Work, and<br>where<br>done. | Rate. | —       | Total<br>Weekly<br>Expenditure.                                                                | £ s. d. |  |
|                                                                                                                                 |                      |                 |                     |                                     |       | £ s. d. | Day Labour<br>Contract Work - -<br>Materials - - -<br>Team Work - - -<br>Tradesmen's Bills - - | £ s. d. |  |
| Work exe-<br>cuted by<br>Contract.                                                                                              | Persons'<br>Names.   | No. of<br>Days. | Rate<br>per<br>Day. | Tradesmen's<br>Bills.               | No.   | —       |                                                                                                | £ s. d. |  |
|                                                                                                                                 |                      |                 |                     |                                     |       | £ s. d. | Rents of Pits & Quar-<br>ries - - -                                                            | £ s. d. |  |
| Materials<br>got and<br>prepared,<br>and from<br>whence.                                                                        | Parties'<br>Names.   | Quantity.       | Rate<br>per<br>Day. | Rent of<br>Pits and<br>Quarries.    | Name. | —       |                                                                                                | £ s. d. |  |
|                                                                                                                                 |                      |                 |                     | Incidental Expenses.                |       | —       | Incidental Expenses -                                                                          | £ s. d. |  |

(a) See orders of Local Government Board as to accounts in Part X.

**No. 6.**

I do hereby give you notice, that after the expiration of three calendar months from the date hereof, I [or if given by the clerk, &c., of a body politic or corporate, describe them], do intend to make a certain highway in the parish of [describing its situation and extent], and to dedicate such highway to the use of the public.

Dated this                      day of                      .  
To *E. F. &c.*                      }                      *A. B.*  
surveyor of the parish        }                      *or*  
of                                        }                      *C. D. [Clerk, &c.]*

W<sup>h</sup>, two of the justices of the peace in and for the county of \_\_\_\_\_, having viewed a certain highway lately made by A. B. in the parish of \_\_\_\_\_, in the said county, situate, &c. [*describing its situation and extent*], do hereby certify, that the same has been made in a substantial manner and of the width required by a certain Act made and passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," &c. [*here set out title of Act.*]

Dated this            day of            .

C. D.  
E. F.

I, A. B., justice of the peace in and for the county of \_\_\_\_\_, do hereby give you, the surveyor [or surveyors] of the parish of \_\_\_\_\_, notice, that the highway leading from \_\_\_\_\_ to \_\_\_\_\_ [describing its situation], is obstructed or impeded from the accumulation of snow [or from the falling down of the banks on the side of the said highway, &c., as the case may be], and require you to cause the same to be removed.

Dated this            day of            .  
To C. D. and E. F. &c.,  
surveyors of the parish of            }            A. B. of, &c.

## No. 2.

*Schedule to be filled up by the Surveyors of Highways of all Parishes, and presented by them, with their Accounts, to the Magistrates at the end of every Year. [The enactment requiring this return has been repealed, see sect. 45, ante, p. 102.]*

|                                                                   |   |   |   |   |
|-------------------------------------------------------------------|---|---|---|---|
| State of the Roads and Highways                                   | - | - | - | - |
| — Bridges                                                         | - | - | - | - |
| — Causeways                                                       | - | - | - | - |
| — Hedges and Ditches                                              | - | - | - | - |
| — Watercourses                                                    | - | - | - | - |
| State all Nuisances                                               | - | - | - | - |
| — Encroachments                                                   | - | - | - | - |
| — the extent of Roads and Highways the Parish is liable to repair | - | - | - | - |
| — what portion thereof has been repaired, and where               | - | - | - | - |
| — what Materials were used for such Repairs                       | - | - | - | - |
| — the Expense of such Repairs                                     | - | - | - | - |
| — the Amount levied during the Year                               | - | - | - | - |

**No. 10.**

*Licence from Justices at Special Sessions for the Highways for a Surveyor to dig, &c., Materials upon inclosed Lands, for the Repair of Highways.*

(to wit.) } To the surveyor of the parish of \_\_\_\_\_, in the hun-  
dred of \_\_\_\_\_, in the said county.

WHEREAS by an Act passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," &c. [here set out title of Act], the surveyor is authorized to dig, get, take, and carry away materials lying upon any lands or grounds within the parish for which he is appointed, for the use and benefit of the highways, but not without the consent of the occupier or owner of such lands or grounds, or his agent, or licence from the justices at a special sessions for the highways: and whereas it appears to us His Majesty's justices of the peace for the

appears to us His Majesty's justices of the peace for the said county and acting within the said [hundred, &c.] at a special sessions for the highways assembled, upon the oath of *C. D.* the said surveyor [or one of the surveyors], that he hath applied to *A. B.* of \_\_\_\_\_ for his consent to dig, get, take, and carry away



**Part I.**

materials from the lands called or known by the names of \_\_\_\_\_ and \_\_\_\_\_ in his occupation [or of which he is the owner, or in the occupation of J. K. or of which J. K. is the owner, and the said A. B. his agent], within the said [parish, &c.], for the purposes aforesaid, and that the said materials are necessary for the repairs of the highways, and that the said A. B. hath refused to permit the same to be dug, got, taken and carried away; and the said A. B. having been duly summoned to appear before us, to show cause why such permission should not be granted, and having appeared before us accordingly [or having sent his steward or agent or C. D. on his behalf, to attend us on that occasion, or but not having appeared] we have heard what has been alleged, and taken the said matter into consideration, and are of opinion that the said materials are necessary, and ought to be dug, got, taken, and carried away for the purposes aforesaid: therefore we do hereby give our licence to the said surveyor [or surveyors] to dig, get, take and carry away the same accordingly, the said surveyor making satisfaction for the same and also for the damage done to such lands in the manner directed by the said Act. Given under our hands the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_.

J. P.

K. P.

## No. 11.

*Licence from Justices at a Special Sessions for the Highways to get Materials for the Repair of the Highways in another Parish besides that wherein such Materials are to be employed.*

(to wit.) } At a special sessions for the highways held at \_\_\_\_\_,  
 } in the hundred, &c., of \_\_\_\_\_ in the said county,  
 by justices of the peace for the said county acting  
 within the said hundred, on the \_\_\_\_\_ day of \_\_\_\_\_.

It appearing to us upon evidence this day received, that sufficient materials cannot conveniently be had within the waste land, common grounds, rivers, or brooks, nor in the inclosed lands or grounds lying within the [parish, &c.] of \_\_\_\_\_ in the said hundred, for the repairs of the highways within the said [parish], nor in the waste lands, common grounds, rivers, or brooks within the [parish] of \_\_\_\_\_ adjoining the said [parish] of \_\_\_\_\_, we do hereby give our licence to the surveyor [or surveyors] of the said [parish] of \_\_\_\_\_ to search for, dig, get, and carry materials within the inclosed lands or grounds of C. D. within the said [parish] of \_\_\_\_\_, to be employed in the repair of the highways within the said [parish] of \_\_\_\_\_, it appearing from evidence before us that there are proper materials within the said lands for the purposes aforesaid lying convenient to the said highways, and that after such materials shall be so taken there will be sufficient left for the use of the highways within the said [parish] of \_\_\_\_\_, upon the said surveyor [or surveyors] making satisfaction for the same, and also for the damage done to such lands, in the manner directed by the Act made and passed in the

fifth and sixth year of the reign of King William the Fourth, intituled "An Act," &c. [*here set out title of Act*], subject to such restrictions as are herein contained. Given under our hands, the day and year above written. Chap. XI.

J. P.  
K. P.

## No. 12

*Information to enable Justices to fix Boundaries of Highways lying in two Parishes.*

County of } At a special sessions for the highways holden, &c.

I. S., the surveyor [*or one of the surveyors*] of the parish of A., came before the justices aforesaid, and informed them, there is in the said county a certain common highway leading from M. to N., and that there is a certain part of the said highway, that is to say, so much thereof as lies between a certain place called C. and a certain other place called D., being in length [as the case may be], one side of which last-mentioned part of the said highway adjoining to the parish of A. lies within the said parish of A., and is to be and of right ought to be repaired by the said parish of A. [*or by, &c., describing the body politic or corporate, or person, liable to the repair*], and that the other side of the same part of the said highway adjoining to the parish of B., lies within the parish of B., and is to be and of right ought to be repaired by the said parish of B. [*or by, &c.*], and stating that the repair of such part of the said highway is very inconvenient to the parishes aforesaid, and the want thereof detrimental to the public; and therefore praying that such part of the said highway may be allotted and apportioned for the repair thereof by the justices aforesaid to the said several parishes of A. and B. [*or to, &c.*] in the manner directed by an Act passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act." &c. [*set out title of Act.*] See plan.

(Signed) I. S., one of the surveyors of parish of A.

The above application was made to us the day and year first above written.

J. P.  
K. P.

## No. 13.

*Summons to be subjoined to a Copy of the above Information.*

County of } To the surveyor [*or surveyors*] of the parish of B. in the said county, any or either of them :

WHEREAS a certain information has been given to us, His Majesty's justices of the peace for the said county, at a special sessions for the highways, by I. S. the surveyor [*or one of the surveyors*] of the parish of A. in the said county, a true copy whereof is above written : these are, in His Majesty's name, to summon you, any

**Part 1.**

or either of you, to appear before us at                      in the said county, on the                      day of                      , to show cause (if any) why an allotment and apportionment of the highways therein mentioned should not be made according to the provisions of the Act referred to in the said information. Hereof fail not. Given under our hands, this                      day of                      .

J. P.  
K. P.

## No. 14.

*Final Order and Adjudication to be filed with the Clerk of the Peace.*

**WHEREAS, &c.**

1.—*State the original application.*

2.—*The summons.*

3.—*The appearance, and that the parties were heard, or their non-appearance.*

Now we, the justices aforesaid, having fully heard and understood the premises, do declare, adjudge, and order that the said highway shall be divided in the following manner: (that is to say,) that at the distance of                      , measuring from the place called C., there shall be erected certain posts or stones, E. and F., on each side of the said highway, and the whole of the said highway from the place called C. to such posts or stones shall be from time to time and at all times hereafter repaired by the parish of A. [or by, &c.], and the whole of the said highway from such posts or stones to the place called D. shall from time to time and at all times hereafter be repaired by the parish of B. [or by, &c.]

In witness whereof we have hereunto set our hands, this                      day of                      .

J. P. (L. S.)  
K. P. (L. S.)

## No. 15.

*Notice from Surveyor to remove Nuisance.*

To C. D. of                      .

IN pursuance of the directions given by an Act passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act, &c.," I, A. B. &c., the surveyor [or one of the surveyors] of the parish of                      , do hereby give you notice forthwith to remove the [filth, dung, ashes, rubbish, &c.], placed by you on a certain part of the King's highway lying between                      and                      in the [parish] of                      , to the obstruction and annoyance of the said highway.

Dated this                      day of                      .

A. B., &c.

## No. 16.

## Chap. XI.

*Order of two Justices for widening a Highway.*

{ We, two of His Majesty's justices of the peace  
(to wit.) } for the said county, acting within the [hundred, &c.]  
of within the said county, having, upon view, found that  
a certain part of the highway between and , in  
the [parish, &c.] of in the said [hundred], for the length  
of yards or thereabouts, and particularly described in the  
plan hereunto annexed, is for the greatest part thereof narrow, but  
may be conveniently enlarged and widened by adding thereto,  
from the lands and grounds of and , of the length  
of yards or thereabouts, and of the breadth of  
feet or thereabouts, particularly described in the plan hereunto  
annexed, which we think will widen and enlarge the same, and  
be much more commodious to the public, do hereby order that  
the said highway be widened and enlarged accordingly, and that  
the surveyor [or surveyors] of the [parish, &c.] of , where  
the said old highway lies, do forthwith proceed to treat and  
make agreement with the said and for the  
recompense to be made for the said ground and for the making  
such ditches and fences as shall be necessary, in such manner,  
with such approbation, and by pursuing such measures and direc-  
tions in all respects as are warranted and prescribed by the statute  
made in the fifth and sixth year of the reign of King William the  
Fourth, intituled "An Act," &c.; and in case such agreement  
shall be made as aforesaid, we do order an equal assessment, not  
exceeding the rate of in the pound to be made, levied,  
and collected upon all and every the parties liable to the payment  
of the highway rate in the said [parish, &c.] of , and that  
the money arising thereupon be paid and applied in making such  
recompense and satisfaction as aforesaid, pursuant to the direc-  
tions of the said Act.

A. B.

C. D.

## No. 17.

*Certificate from the said Justices to the Court of Quarter Sessions.*

To the justices of the peace at their general quarter sessions  
to be held at in the said county, the day  
of , one thousand eight hundred and .

This is to  
be written  
upon the  
above order  
when no  
agreement  
can be made.

We, the within-named A. B. and C. D., do hereby certify to the  
said court of quarter sessions, that we made and signed the within  
order, and that with our approbation and by our direction the  
said surveyor [or surveyors] has [or have] treated with the said  
and for the said lands required for the purposes

**Part I.**

aforesaid, but was not able to make any agreement for that purpose with them or either of them, and that he tendered to the said the sum of , and to the said the sum of , as a recompense for the said ground, and for the making the said ditches and fences, which he [or they and each of them] refused to receive.

A. B.

C. D.

## No. 18.

*Consent from the Owner of the Land through which a new Highway is proposed to be made.*

I, A. B. of , in the county of , being the owner of the lands described in the plan hereunto annexed, through which part of a certain highway lying between and is intended to be diverted and turned, in consideration of the sum of to be paid to me for the said land and soil thereof, do hereby consent to the making and continuing such new highway through my said lands.

Given under my hand, this day of , one thousand eight hundred and .

*Certificate by Justices of View, &c., where the Proposal to stop up emanates from another Party than a Vestry, ss. 84, 85.*

As to this form, see *ante*, pp. 138—140.

A form may be obtained from the publishers of this work. It is too long for insertion here.

*Certificate, where the Proceeding to stop up, &c., originates with the Vestry.*

See *Oke's Formulist*, p. 717,—and forms, to be obtained from the publishers of this work.

## No. 19.

*Form of Notice of diverting, &c., Highway.*

NOTICE is hereby given, that on the day of next, application will be made to His Majesty's justices of the peace assembled at quarter sessions in and for the county of , at , for an order for [if the order be for turning, diverting, and stopping up, &c., here to state it, and describe the road ordered to be turned, diverted, and stopped up; if the order be for stopping up a useless road, here to state it, and describe the road ordered to be stopped up]; and that the certificate of two justices having viewed the same, &c., with the plan of the old and proposed new

highway, will be lodged with the clerk of the peace for the said county on the                      day of                      next. **Chap. XI.**

A. B.                      } Surveyor [or surveyors] of  
C. D., &c., } the parish of                      .

No. 20.

*Summons for any Person or Persons to attend a Justice or Justices.*

To A. B.

{ WHEREAS complaint and information hath been made  
(to wit.) } upon oath before me, C. D., one of His Majesty's  
justices of the peace for the said [county, &c.], by E. F. of  
that, &c., [here state the nature and circumstances of the case, as far  
as it shall be necessary to show the offence, and to bring it within the  
authority of the justice; and in doing that follow the words of the  
Act, as near as may be]: these are therefore to require you personally  
to appear before me [or the justices to be assembled at their  
petty sessions (or special sessions for the highways) to be holden  
at                      , in the said county, &c.,] on the                      day of  
next, at the hour of                      in the                      noon, to answer to the  
said complaint and information made by the said E. F., who is  
likewise directed to be then and there present to make good the  
same. Herein fail not.

Given under my hand, this                      day of                      .

No. 21.

*Information.*

{ BE it remembered, that on the                      day of                      ,  
(to wit.) } A. B. of                      , in the said county, informeth and  
maketh oath before me,                      , one of His Majesty's justices of  
the peace for the said county, that                      , of                      , in the  
said county [here describe the offence, with the time and place, and  
follow the words of the Act as near as may be], contrary to the  
statute in the fifth and sixth year of the reign of His Majesty  
King William the Fourth, intituled "An Act," &c. [here set out  
title of Act], which hath imposed a forfeiture of                      for the  
said offence.

Taken and sworn, the                      day of                      , before me,  
A. B.

## Part I.

## No. 22.

*Form of Conviction.*

(to wit.) } BE it remembered, that on the                      day of                      , in the county aforesaid, A. B. came before us                      of His Majesty's justices of the peace for the said county, and informed us that E. F. of                      , on the                      day of                      , now last past, at                      , in the said county, did [*set forth the fact in the manner described by the Act*], whereupon the said E. F., after being duly summoned to answer the said charge, appeared before us on the                      day of                      , in the said county, and having heard the charge alleged against him, declared that he was not guilty of the said offence; but the same being fully proved upon the oath of G. H., a credible witness, it manifestly appears to us the said justices that he the said E. F. is guilty of the offence charged upon him in the said information: it is therefore considered and adjudged by us the said justices that the said E. F. be convicted, and we do hereby convict him of the offence aforesaid; and we do hereby declare and adjudge that he the said E. F. hath forfeited the sum of                      , of lawful money of Great Britain for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given, &c.

This is to be inserted when the party refuses to appear.

To be inserted when party confesses the charge.

[*After the words "being duly summoned to answer the said charge," insert "did not appear before us pursuant to the said summons," or, "did neglect and refuse to make any defence against the said charge;" but the same being fully proved, &c., as before.*]

[*After the words "charge alleged against him," insert "acknowledged and voluntarily confessed the same to be true;" and it manifestly appears to us the said justices, &c., as above.*]

## No. 23.

*Warrant to distrain for the Forfeiture.*

(to wit.) } To the constable [headborough or tithingman] of                      WHEREAS A. B. of                      in the said county [yeoman, &c.] is this day convicted before us, two of His Majesty's justices of the peace in and for the said county, upon the oath of G. H., a credible witness, for that the said A. B. hath [*here set forth the offence, describing it particularly in the words of the Act, as near as may be*], contrary to the statute in that case made and provided; by reason whereof the said A. B. hath forfeited the sum of                      to be distributed as herein is mentioned, which he hath refused to pay: these are therefore in His Majesty's name to command you to levy the said sum of                      by distress of the goods and chattels of him the said A. B.; and if within the space of four days next after such distress by you taken the said sum of                      , together with the reasonable charges of taking and keeping the same, shall

## Chap. XI.

**C. D.**  
**E. F.**

*Return of the Constable to be made upon the Warrant of Distress  
when there are no Effects.*

Sworn before me, the day and year, &c.  
C. D.

***Commitment for Want of Distress.***

WHEREAS A. B. of \_\_\_\_\_, in the said county, yeoman, was on the \_\_\_\_\_ day of \_\_\_\_\_ convicted before us, two of His Majesty's justices of the peace in and for the said county, upon the oath of E. F., a credible witness, for that he the said A. B. [here set forth the offence], contrary to the statute made in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," &c. [here set out title of Act], by reason whereof the said A. B. hath forfeited the sum of \_\_\_\_\_; and whereas on the \_\_\_\_\_ day of \_\_\_\_\_ in the year aforesaid we did issue our warrant to the [constable] of \_\_\_\_\_ to levy the said sum of \_\_\_\_\_ by distress and sale of the goods and chattels of him the said A. B., and to distribute the same according to the directions of the said statute: and whereas it duly appears to us upon the oath of the said [constable] that the said [constable] hath used his best endeavours to levy the said sum on the goods and chattels of the



**Part I.**  

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said *A. B.* as aforesaid, but that no sufficient distress can be had whereon to levy the same : these are therefore to command you the said [constable] of                      aforesaid to apprehend the said *A. B.*, and him safely convey to the common gaol [or house of correction] at                      , in the said county, and there deliver him to the keeper thereof, together with this precept : and we do hereby also command you the said keeper to receive and keep in your custody, and to keep to hard labour, the said *A. B.* for the space of                      , unless the said sum shall be sooner paid, pursuant to the said conviction and warrant ; and for so doing this shall be your sufficient warrant.

Given under our hands, the                      day of                      , in the year  
of our Lord                      .

*C. D.*  
*E. F.*

## PART II.

### CHAPTER XII.

### Chap. XII.

## THE HIGHWAY, ACT, 1862

25 & 26 VICT. CAP. 61.

*An Act for the better Management of Highways in  
England.* [29th July, 1862.]

WHEREAS it is expedient to amend the law relating to  
highways in England: Be it enacted, &c.

#### PRELIMINARY.

I. This Act shall not extend to Scotland or Ire- Limits of  
land (a). Act.

II. The word "county" (b) in this Act shall not Definition of  
include a "county of a city" or a "county of a town," "county" and  
but where a county, as hereinbefore defined, is divided "borough."  
into ridings or other divisions having a separate court  
of quarter sessions of the peace, it shall mean each such  
division or riding, and not the entire county; and for  
the purposes of this Act all liberties and franchises,

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(a) By the H. Act, 1878, s. 2, that Act does not apply to Scotland or Ireland, and save as expressly provided (see sect. 27), Part I. of H. Act, 1878, does not apply to the Isle of Wight, nor to any part of the metropolis (see sect. 38), nor to any part of a county to which the 23 & 24 Vict. c. 68, "An Act for the better managing and control of the Highways in South Wales" extends.

(b) By H. Act, 1864, s. 3, p. 222, "county" shall include any division of a county that has a separate county treasurer.

**Part II.**

except the liberty of St. Alban's, which shall be considered a county (a), and except boroughs as hereinafter defined, shall be considered as forming part of that county by which they are surrounded (a), or if partly surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary; the word "borough" shall mean a borough as defined by the Act 5 & 6 Will. 4, c. 76, "for the Regulation of Municipal Corporations in England and Wales" (b), or any place to which the provisions of the said Act have been or shall hereafter have been extended.

Definition of  
"parish"  
"highway  
district,"  
and "high-  
way board."

III. The word "parish" (c) shall include any place maintaining its own highways (d), the expressions "highway district" and "highway board" shall refer only to highway districts formed and highway boards constituted in pursuance of this Act.

Definition of  
"principal  
Act" and  
"Highway  
Acts."

IV. The Act 5 & 6 Will. 4, c. 50, intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," is hereinafter distinguished as the "principal Act;" and this Act and the principal Act, and the other Acts

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(a) See *Giles v. Glubb*, 29 J. P. 789; 30 J. P. 38.

(b) That is, by sect. 142 of that Act, any city, borough, port, cinque port, or town corporate, named in one of the Schedules (A.) (B.) to the Act annexed.

(c) See *Giles v. Gubb*, 30 J. P. 38, a case of a borough. See interpretation clause, H. Act, 1835, *ante*, p. 72. By H. Act, 1864, s. 3, *post*, p. 222, "poor law parish" shall mean a place that separately maintains its own poor; "highway parish" shall mean a place that after the constitution of a highway district separately maintains its own highways, and is entitled to return a waywarden or waywardens to the highway board of the district; "highway rate" shall include any rate, whether poor rate or not, out of the produce of which monies are payable in satisfaction of precepts of a highway board.

(d) As to what places are to be considered as separately maintaining their own highways, see H. Act, 1862, ss. 32 33, and H. Act, 1864, s. 5, *post*, p. 222.

amending the principal Act, are hereinafter included Chap. XII. under the expression "the Highways Acts" (e).

The H. Act, 1864, s. 1, *post*, p. 221, gives short titles of Highway Acts.

The 41 & 42 Vict. c. 77, may be cited as the "Highways and Locomotives (Amendment) Act, 1878." See sect. 1 of that Act, *post*, Chap. 14.

### *Formation of Highway Districts.*

V. Any 5 or more justices of a county may by writing under their hands require the clerk of the peace to add to or send with the notice (f) required by law to be given of the holding of courts of general or quarter sessions a notice in the form marked (A.) in the schedule, or as near thereto as circumstances admit, that at the court therein mentioned a proposal will be made to the justices to divide the county or some part thereof into highway districts (g), or to constitute the whole or some part thereof a highway district, and also require the clerk of the peace to send by post in a prepaid letter notices in the aforesaid form to the churchwardens or overseers of every (h) parish (i) mentioned in the said notice; and upon such requisition being complied with, the justices assembled at the court of general or quarter sessions mentioned in the notice may entertain such proposal,

Power to justices, in general or quarter sessions assembled, to issue provisional orders for forming highway districts.

(e) See sect. 1, H. Act, 1864, *post*, p. 221.

(f) By 4 & 5 Will. 4, c. 48, s. 2, it is enacted that "public notice shall be given in two newspapers, generally circulating in the county, of the time of holding the general or quarter sessions, or any adjournment thereof, at least two weeks before the time of holding the same." See also 15 & 16 Vict. c. 81, s. 49. The requisition to the clerk of the peace must of course be given sufficiently early to allow of the publication at the time required by the statute.

(g) By H. Act of 1878, s. 3, *post*, districts are to be made as far as possible coincident in area with rural sanitary districts.

(h) If notice is not given to every parish, the order cannot be made. *R. v. JJ. of Sussex*, 28 J. P. 469.

(i) As to union of parishes in different counties, see H. Act, 1864, s. 13, *post*, p. 227.

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and make a provisional order (a) dividing their county or some part thereof into highway districts, or constituting the whole or some part of their county a highway district, for the more convenient management of highways, but such order shall not be of any validity unless it is confirmed by a final order (b) of the justices assembled at some subsequent court of general or quarter sessions: [provided that when it is proposed that only a part of a county shall be divided into a highway district not less than two out of the five justices making such proposal shall be resident in the said district] (c).

The H. Act, 1864, s. 17, *post*, p. 229, further defines the powers of justices as to the formation and alteration (d) of highway districts.

Regulations  
as to the  
making, &c.,  
of orders of  
justices.

VI. The following regulations shall be enacted as to the making, confirmation, and approval of the orders of justices for forming highway districts:—

1. The justices making a provisional order under this Act shall appoint some subsequent court of general or quarter sessions, to be held within a period of not more than six months, for the taking into consideration the confirmation of the provisional order by a final order:

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(a) H. Act, 1864, s. 18, *post*, p. 230, defines "provisional order."

(b) H. Act, 1864, s. 18, *post*, p. 230, defines expression "final order."

(c) The part within brackets is repealed by sect. 6, H. Act, 1864, *post*, p. 223, and in lieu thereof it is enacted, "That when it is proposed that only part of a county is to be constituted a highway district, not less than two out of the five justices making such proposal shall be resident in the said district, or acting in the petty sessional division in which such district or some part thereof is situate."

(d) Any district once formed may be altered by the addition or subtraction of parishes, and new districts may be formed by the union of existing districts, &c. H. Act, 1862, s. 39. But where, after the formation of a district, any parish applies to be removed from it, all costs attending such application and removal may be ordered to be paid by the parish so applying. H. Act, 1864, s. 15, *post*, p. 228.

2. The clerk of the peace shall add to or send with Chap. XII.  
the notice required by law to be given of the  
holding of courts of general or quarter sessions  
a notice in the form marked (B.) in the schedule  
hereto, or as near thereto as circumstances  
admit, of the appointment so made by the  
justices in relation to the confirmation of the  
provisional order :
3. The justices assembled at the appointed court of  
general or quarter sessions may make a further  
order quashing the provisional order, or con-  
firming it with or without variations, or respite  
the consideration of such provisional order to  
some subsequent court of general or quarter  
sessions, provided,—
- Firstly, that where the variations made ex-  
tend to altering the parishes constituting  
any highway district or districts as formed  
in the provisional order, the order shall be  
deemed to be provisional only, and shall  
be dealt with accordingly :
- Secondly, that where a respite is made to any  
subsequent general or quarter sessions, the  
clerk of the peace shall give notice of such  
respite in manner in which he is required  
to give notice in respect of sessions at  
which a provisional or final order is pro-  
posed to be made :
4. The provisional order shall state the parishes to  
be united in each district, the name by which  
the district is to be known, and the number of  
waywardens (such number to be at least one)  
which each parish is to elect (e) :

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(e) A provisional order constituted the township of E., and certain other parishes and places a highway district, and directed that one waywarden should be elected for each of the said parishes, townships, and places. E. was divided into three hamlets, each of which maintained its own highways. The separate hamlets

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[5. In addition to the foregoing matters, the provisional order may and the final order shall state the time, not being more than 7 days after the first election of waywardens in pursuance of this Act, and the place at which the first meeting of the highway board is to be held in the district] (a) :

6. Notice of the provisional and final orders shall as soon as possible after the making thereof be given by the clerk of the peace, by publishing a copy in the *London Gazette* and in one or more newspapers circulating in the county, or if the whole county is not affected by such order in one or more newspapers circulating in the district affected by such orders, and by sending a copy by post in a prepaid letter to the overseers of every parish within the proposed highway district, and there shall be added to the notice of the provisional order the date of the sessions at which the confirmation of such order will be considered (b).

H. Act, 1864, s. 4, *post*, p. 222, contains provisions as to orders of justices, where more highway districts than one are comprised in same ; and see H. Act, 1864, s. 13, *post*, p. 227, as to union of parishes in different counties.

Restrictions  
on formation  
of highway  
districts.

VII. The following restrictions shall be imposed with respect to the formation of highway districts in pursuance of this Act :—

were not named in the order. Held, that the provisional order and the final order based upon it were bad, as the provisional order did not state whether any or what waywardens were to be elected for the three hamlets. *Reg. v. J.J. of West R. of Yorkshire*, 34 L. J. M. C. 227 ; *Ex p. Kay*, 29 J. P. 259.

(a) By H. Act, 1864, s. 10, the above paragraph between brackets is repealed, and another provision enacted in lieu thereof, which see *post*, p. 226 : and see sect. 11 of H. Act, 1864, *post*, p. 226, as to justices appointing a day for first election of waywardens.

(b) By "H. Act, 1864," s. 12, *post*, p. 227, no order forming a highway shall be invalidated by reason of its not being published in the *London Gazette*.

Firstly, there shall not be included in any highway **Chap. XII.**

district formed in pursuance of this Act any of Not to include.  
the following places; that is to say,

Any part of a county to which the 23 & 24 Places in South Wales,  
Vict. c. 68, intituled "An Act for the  
better Management and Control of the  
Highways in South Wales," extends: (c)

The Isle of Wight: (d)

Any district constituted under the Public Isle of Wight. Districts under Public Health or Government Act.  
Health Act, 1848, and the Local Govern-  
ment Act, 1858 (e), or either of such  
Acts: (f)

Any parish or place the highways of which Places under District Board, 5 & 6 Will. 4, c. 50, s. 18.  
are at the time of the passing of this Act,  
or may be within 6 months afterwards,  
under the superintendence of a board esta-  
blished in pursuance of section 18 of the  
principal Act, unless with the consent of  
such board: (g)

Any parish or place within the limits of the Places within me- tropolis.  
metropolis as defined by 18 & 19 Vict. c.  
120, and intituled "An Act for the better  
Local Management of the Metropolis:"

Any parish or place, or part of a parish or Places under Local Act.  
place, the highways whereof are maintained  
under the provisions of any local (h) Act of  
Parliament:

Secondly, there shall not be included in any highway Parts of borough (ex- cept with consent).  
district formed in pursuance of this Act any

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(c) *Videlicet*, the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan. The Act is printed at length, *post*, Part XI.

(d) The management of the roads in the Isle of Wight is regulated by the local Act, 53 Geo. 3, c. xcii; see *ante*, p. 185, n. (a).

(e) These Acts are now repealed; see 38 & 39 Vict. c. 55, noticed, *post*, Part III.

(f) See H. Act, 1864, s. 5, *post*, p. 222; 26 & 27 Vict. c. 16, s. 6, repealed.

(g) This paragraph is repealed by H. Act, 1878, s. 12, *post*.

(h) As to this not applying to a Turnpike Act, see 26 & 27 Vict. c. 94, s. 1.



Part II.

Provision for  
places in  
more than  
one county.

parish or place or part of a parish or place within the limits of a borough (*a*) without the consent, firstly, of the council of such borough, and, secondly, of the vestry of the parish which, or part of which, is proposed to be included:

Thirdly, where any parish separately maintaining its own highways is situate in more than one county the whole of such parish shall, for the purposes of this Act, be deemed to be within the county within which the church of such parish, or (if there be no church) the greater part of such parish, is situate (*b*):

Justices may  
combine  
the several  
townships,  
&c., of  
a parish.

Lastly, where a parish separately maintaining its own poor is divided into townships, tithings, hamlets, or places, each of which separately maintains its own highways, it shall be lawful for the justices, if they think fit, in their provisional order to combine such townships, tithings, hamlets, and places, and to declare that no separate waywardens shall be elected for such townships, tithings, hamlets, and places, and that such parish shall be subject to the same liabilities in respect of all the highways within it which were before maintained by such townships, tithings, hamlets, and places separately, as if all their several liabilities had attached to the whole parish; and that a waywarden or waywardens shall be elected for such parish as a whole; and where such order is made, all the provisions herein contained in relation to

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(*a*) What is meant by the word "borough" is defined in sect. 2, *ante*, p. 185. The H. Act, 1864, s. 8, *post*, p. 225, contains a provision for places partly within and partly without a borough.

(*b*) See H. Act, 1864, s. 13, *post*, p. 227. It is not very easy to reconcile the two enactments, but the meaning seems to be that where a parish is partly in county A. and partly in county B., and the church, or the greater part of the parish, is in county A., the whole parish may be combined with other parishes in A. without the concurrence of the magistrates of B. But the whole parish cannot be combined with parishes in B. without the concurrence of the magistrates of *both* counties. See H. Act, 1862, s. 33, *post*, p. 208.

parishes within the meaning of this Act shall be applicable to the parish formed by such combination (c). Chap. XII.

*Legal Objections to Formation of District.*

VIII. No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating to the formation of a highway district, after the expiration of three calendar months from the date of the publication in the *Gazette* (d) of the order under which the district is formed; and the production of a copy of the *London Gazette* containing a copy of the order of justices forming a highway district shall be receivable in all courts of justice, and in all legal proceedings, as evidence of the formation of the district and of the matters in the said order mentioned. Rules as to objections and evidence.

See H. Act, 1864, s. 12, *post*, p. 227, as to further evidence of formation of district.

By H. Act, 1864, s. 16, *post*, p. 229, no order of justices forming a highway district shall be void by reason that it includes in such district a place which the justices are not entitled to include.

All expenses properly incurred by the justices of any county in maintaining the validity of any provisional or final order made by them shall be payable out of the county rate of that county. H. Act, 1864, s. 16, *post*, p. 229.

*Highway Board (e).*

IX. There shall be enacted, with respect to the constitution of the highway board in each highway district, the provisions following (that is to say): Constitution of highway board.

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(c) The H. Act, 1864, s. 7, *post*, p. 224, contains further provisions as to the combination of townships, &c.;—and see this section as to a poor law parish or part of same becoming a highway parish; and see a provision in this section for places in which no surveyors or waywardens have been elected.

(d) See H. Act, 1864, s. 12, *post*, p. 227. *R. v. JJ. of Lindsey*, 30 J. P. 86.

(e) By H. Act, 1878, s. 4, *post*, Chap. 14, a rural sanitary authority

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1. The highway board shall consist of the waywardens elected in the several places within the district, in manner hereinafter mentioned (*a*), and of the justices acting for the county and residing within the district (*b*):
2. The board shall be a body corporate, by the name of the highway board of the district to which it belongs having a perpetual succession and a common seal, with a power to acquire and hold lands (*c*) for the purposes of the H. Acts, without any licence in mortmain:
3. No act or proceeding of the board shall be questioned on account of any vacancy or vacancies in their body:
4. No defect in the qualification or election of any person or persons acting as members or member of the board or committee of a board shall be deemed to vitiate any proceedings of such board in which he or they have taken part in cases where the majority of members parties to such proceedings are duly entitled to act:
5. Any minute made of proceedings at meetings of the board or of committees of the board, if signed by any person purporting to be the chairman of the board or committee of the board, either at the meeting of the board or committee of the board at which such proceedings took place, or at the next ensuing meeting of the board or committee of the board, shall be receivable in evidence in all legal proceedings without further proof; and until the contrary is

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coincident in area with a highway district may become the highway board. As to consequences of rural sanitary authority becoming highway board, see sect. 5 of that Act, *post*.

(*a*) See sect. 10, *post*, p. 196.

(*b*) See further, as to justices, H. Act, 1864, s. 29, *post*, p. 236.

(*c*) H. Act, 1864, s. 53, *post*, Chap. 13.

proved every meeting of the board or committee of the board in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified :

6. No member of a board by being party to, or executing in his capacity of member, any contract or other instrument on behalf of the board, or otherwise lawfully (*d*) exercising any of the powers given to the board, shall be subject to be tried or prosecuted, either individually or with others, by any person whomsoever; and the bodies or goods or lands of the members shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, tried, or executed by them, or by reason of any other lawful act done by them in execution of any of the powers of the board; and the members of the board may apply any monies in their hands for the purpose of indemnifying themselves against any losses, costs, or damages they may incur in execution of the powers granted to them :
7. [Repealed Statute Law Rev. Act, 1875; see H. Act, 1864, s. 27, *post*, p. 236.]

As to board being successor of parish surveyor, see H. Act, 1862, s. 43, *post*, p. 216.

H. Act, 1864, s. 27, *post*, p. 236, relates to the proceedings of the board.

H. Act, 1864, s. 26, *post*, p. 235, relates to service of notices, &c., by board.

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(*d*) See *Mill v. Hawker*, 43 L. J. Ex. 129; 44 L. J. Ex. 49; L. R. 9, Ex. 309; L. R. 10, Exch. 92.

**Part II.*****Election of Waywardens (a).***Election of  
waywardens.

X. The following regulations shall be observed with respect to the election of waywardens in highway districts :—

In every parish (b) forming part of a highway district there shall be elected every year for the year next ensuing a waywarden, or such number of waywardens as may be determined by order of the justices (c) :

Such waywarden or waywardens shall be elected in every parish forming part of a highway district at the meeting and time and in the manner, and subject to the same qualification and the same power of appointment in the justices in the event of no election taking place, or in the event of a vacancy, at, in, and subject to which a person or persons to serve the office of surveyor would have been chosen or appointed if this Act had not passed (d) :

The justices shall in their provisional order make provision for the election of a waywarden or waywardens in places where no surveyor or surveyors

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(a) When rural sanitary authority exercises the powers of a highway board under sect. 4 of H. Act, 1878 (*post*, Chap. 14), waywardens are not to be appointed for any parish in the district.

By 39 & 40 Vict. c. 61, "The Divided Parishes and Poor Law Amendment Act, 1876," parts of parishes may, under circumstances, be amalgamated, &c., with others; and by sect. 5 of this Act, where a parish affected by the order shall be included in a highway district, its condition therein and the appointment of the waywarden thereof shall be changed according to the terms of the order, whether its area or contents be diminished or increased thereby: and see 42 & 43 Vict. c. 54, s. 7, *post*, Part VII.

(b) *i. e.*, in every place, whether hamlet, township, or parish, maintaining its own highways, sect. 3, *ante*, p. 186, unless combined by order under sect. 7. *Ex p. Kay*, 29 J. P. 259. *R. v. JJ. of Yorkshire*, W. R. 34 L. J. M. C. 227.

(c) See sect. 6, sub-sect. 4, *ante*, p. 189.

(d) See 5 & 6 Will. 4, c. 50, ss. 6, 7, 11; H. Act, 1864, s. 11, *post*, p. 226. See *R. v. Cooper*, L. R. 5 Q. B. 457, 39 L. J. Q. B. 273, where through a mistake a poll was not taken.

were elected previously to the place forming part of a highway district (See H. Act, 1864, s. 7, *post*, p. 224) : Chap. XII.

**A** waywarden shall continue to act until his successor is appointed, and shall be re-eligible (e).

By "H. Act, 1864," s. 11, *post*, p. 226. In forming a highway district under the "H. Act, 1862," the justices may appoint by their final order a day on which the first election of waywardens as members of the highway board is to take place in the district.

By H. Act, 1864, s. 19, *post*, p. 230. Every waywarden before taking his seat as a member of a highway board, shall produce a certificate of his having been duly elected or appointed a waywarden ; and this section directs how such certificate shall be signed.

A waywarden may sit as such for more places than one, but he shall be entitled to one vote only as waywarden. H. Act, 1864, s. 19, *post*, p. 230.

By 26 & 27 Vict. c. 61, s. 1, *post*, no waywarden is directly or indirectly to contract for the repair of any road or other work to be executed under the provisions of H. Act, 1862, within his own parish or in any other parish, under a penalty of £10.

By H. Act, 1864, s. 20, *post*, any waywarden may contract for the supply or cartage of materials within the parish for which he is waywarden with the license of 2 justices obtained as mentioned in that section.

As to waywardens appointing paid collectors of highway rates, see H. Act, 1864, s. 31, *post*.

### *Consequences of Formation of Highway District.*

**XI.** At and after the first meeting in any highway district of the board of such district the following consequences shall ensue : Consequences of establishment of highway board (f).

All such property, real and personal, including all

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(e) By H. Act, 1878, s. 11, *post*, Chap. 14, waywardens continue in office till the 30th April in the year following the year in which they were elected.

(f) Sect. 43 of H. Act, 1862, *post*, p. 216, contains further provisions as to the board and surveyors.

**Part II.**  

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interests, easements, and rights in, to, and out of property, real and personal, and including things in action, as belong to or are vested in, or would but for this Act have belonged to or been vested in, any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the highway board of that district for all the estate and interest of such surveyor or surveyors as aforesaid, but subject to all debts and liabilities affecting the same :

All debts and liabilities incurred in respect of any property transferred to the highway board may be enforced against the board to the extent of the property transferred :

All such powers (a), rights, duties, liabilities, capacities, and incapacities (except the power of making, assessing, and levying highway rates), as are vested in or attached to, or would but for this Act have become vested in or attached to, any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the highway board (b) :

All property by this Act transferred to the board shall be held by them upon trust for the several parishes or places now maintaining their own highways within their district to which such property belongs, or for the benefit of which it was held previously to the formation of the district.

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(a) See *Edgeware Highway Board v. Harrow Gas Co.*, L. R. 10 Q. B. 92, *ante*, p. 50, where board allowed a gas company to lay down gas pipes.

(b) By sect. 43, *post*, p. 216. The outgoing surveyor shall continue in office until 7 days after the appointment of the district surveyor, and he may recover any highway rate made and then remaining unpaid. *R. v. Bluffield*, 29 J. P. 245.

*Appointment of Officers.*Chap. XII.

XII. The highway board of a district shall, at their first meeting (d), or at some adjournment thereof, by writing under their seal, appoint a treasurer, clerk, and district surveyor (e); they may also at any meeting, if they think fit, appoint an assistant surveyor; they may from time to time remove any of such officers, and appoint others in the room of such as may be so removed, or as may die or resign; they may also, out of any monies in their hands, pay such salaries as they think reasonable to the clerk and district and assistant surveyor, and to the treasurer, if they think necessary: provided that before the treasurer enter upon his office the board shall take sufficient security (f) from him for the due performance of the duties of his office; but no appointment except the first, to any of the offices specified in this section, shall be made unless notice in writing has been sent to every member of the board.

XIII. Not more than one office of treasurer, clerk, and district or assistant surveyor of the same highway board shall be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent, or servant, one of the other, or of the partner of either of them; and if any person accepts or holds the office of treasurer, clerk, or district or assistant surveyor, contrary to this provision, he shall be liable to a penalty not exceeding £50.

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(c) See further as to mode of appointment of officers, H. Act, 1864, s. 30, *post*, p. 237. As to power to appoint paid collectors of highway rates, see H. Act, 1864, s. 31, *post*, p. 237.

(d) In case of board failing to appoint officers, justices may appoint, see H. Act, 1864, s. 45, *post*, Chap. 13.

(e) By H. Act, 1878, s. 6, *post*, Chap. 14, highway boards may combine to appoint a district surveyor.

(f) See *R. v. Patteson*, 4 B. & Ad. 9.



**Part II.**  
**Duties of**  
**treasurer.**

**XIV.** The treasurer of each highway board shall receive, and hold to the account of such board, all monies paid to or for the use of such board, and shall make payments thereout under orders of such board, and shall once in every 3 months, on or at such days or times as the board may direct, or oftener if required by the board, make up an account of all monies received and paid by him, and deliver the same to the clerk of the board (see sect. 31, *post*, p. 206).

**Duties of**  
**clerk (a).**

**XV.** The clerk of every highway board shall in person, or by such deputy as may be allowed by such board, attend all meetings of the board, and shall conduct the correspondence thereof, and enter and keep in books to be provided for the purpose, notes, minutes, or copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings and correspondence of such board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the board may direct.

**Duties of**  
**district sur-**  
**veyor (b).**

**XVI.** The district surveyor shall act as the agent of the board in carrying into effect all the works and performing all the duties by this Act required to be carried into effect or to be performed by the board, and he shall in all respects conform to the orders of the board in the execution of his duties (c), and the assistant sur-

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(a) By sect. 42, sub-sect. 6, *post*, p. 215, any summons or notice, or any writ or any proceeding at law or in equity, requiring to be served upon the board, may be served by the same being left at, or transmitted through the post in a prepaid letter directed to the office of the board, or being given personally to the district surveyor or clerk to the board.

And by sect. 18, *post*, p. 204, the highway board may appear before the justices at petty sessions, by their district surveyor or clerk, or by any member of the board.

(b) By sect. 37, *post*, p. 211, the surveyor is exempted from turnpike tolls while engaged in the execution of his duty.

(c) If a highway board, acting as a corporation, order the dis-

veyor, if any, shall perform such duties as the board may require, under the direction of the district surveyor. Chap. XII.

As to officers accounting to board, see H. Act, 1862, s. 31, *post*, p. 206.

### *Works and Duties of Board.*

XVII. The highway board shall maintain in good repair the highways within their district, and shall, subject to the provisions of this Act, as respects the highways in each parish within their district, perform the same duties, have the same powers, and be liable to the same legal proceedings as the surveyor of such parish would have performed, had, and been liable to if this Act had not passed. It shall be the duty of the district surveyor to submit to the board at their first meeting (d) in every year an estimate of the expenses likely to be incurred during the ensuing year for maintaining and keeping in repair the highways in each parish within the district of the board, and to deliver a copy of such estimate as approved or modified by the board so

Board to maintain highways.

Estimate of expenses to be submitted at first meeting of board.

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district surveyor to commit a trespass on private property within the district of the board for the purpose of removing an obstruction from a disputed highway, the surveyor is liable to an action if he obeys the order and commits the trespass. So held, affirming the decision of the court below on that question, leaving untouched the decision of that court, that the individual members of the board are personally liable to an action of trespass. *Mill v. Hawker*, 44 L. J. Ex. 49; L. R. 9 Ex. 309; 10 Ex. 92.

(d) It is not clear whether this is to be the first meeting in the current year, *i. e.*, the first meeting after 31st December, or the first meeting after the election of waywardens, which takes place on the 25th March, or within 14 days afterwards (*ante*, p. 20); but the latter construction would appear to be the most reasonable.

By H. Act, 1878, s. 9, *post*, Chap. 14, the accounts of the highway authority of every highway district and highway parish are made up and balanced to the 25th March in each year.

**Part II.**

far as the same relates to each parish, to the waywarden of such parish.

By H. Act, 1864, s. 22, *post*, p. 232, a highway board may contract to repair highways for the repair of which other parties are liable.

By H. Act, 1864, s. 52, *post*, Chap. 13, board may contract for materials for highways.

As to board contributing to the repair of turnpike roads, see 26 & 27 Vict. c. 94, s. 1, *post*, Part V.; and as to its other powers and liabilities with respect to such roads and dis-turnpiked roads, see Part V.

Sect. 51 of H. Act, 1864, *post*, Chap. 13, relates to encroachments on highways.

By H. Act, 1864, ss. 47—50 *post*, Chap. 13, a highway board has power to make certain improvements and borrow money for same.

By sect. 53 of H. Act, 1864, *post*, Chap. 13, board may purchase land for improving highways.

By H. Act, 1862, s. 46, *post*, p. 218, board may permit landowner to erect fences without incurring liability to repair highway.

Proceedings  
where roads  
are out of  
repair (a).

**XVIII.** Where complaint is made to any justice of the peace that any highway (b) within the jurisdiction of the highway board is out of repair, the justice shall issue two summonses, the one addressed to the highway board and the other to the waywarden of the parish liable to the repair of such highway, requiring such board (c) and waywarden to appear before the justice at some petty sessions, in the summons mentioned, to be held in the division where such highway is situate; and at such petty sessions, unless the board undertake to repair

(a) But now, by H. Act, 1878, s. 10, *post*, Chap. 14, the county authority has power to enforce performance of duty to repair by defaulting highway authority. See the mode of proceeding where a highway, not within the jurisdiction of a highway board, is out of repair, H. Act, 1835, sect. 94, p. 149, and see *ante*, p. 47. If the road out of repair be part of a turnpike road, the justices must proceed as directed by H. Act, 1835, s. 94, *ante*, p. 149.

(b) *Seemle*, that sections 17, 18, 19 of this Act, and sections 94 and 95 of H. Act, 1835, apply only to admitted highways. *Reg. v. Farrer*, note to sect. 19, *post*, p. 204.

(c) The board may appear by their district surveyor, or clerk, or any member of the board. (End of the section.)

the road to the satisfaction of the justices, or unless **Chap. XII.**  
the waywarden deny the liability (d) of the parish to repair, the justices shall direct the board to appear at some subsequent petty sessions to be then named, and shall either appoint some competent person to view the highway, and report to them on its state at such other petty sessions, or fix a day previous to such petty sessions, at which two or more of such justices will themselves attend to view the highway.

At such last-mentioned petty sessions, if the justices are satisfied either by the report of the person so appointed, or by such view as aforesaid, that the highway complained of is not in a state of complete repair, it shall be their duty to make an order on the board limiting a time for the repair of the highway complained of; and if such highway is not put in complete and effectual repair by the time limited in the order, the justices in petty sessions shall appoint some person to put the highway into repair, and shall by order direct that the expenses of making such repairs, together with a reasonable remuneration to the person appointed for superintending such repairs, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the board; and any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, in the same manner as if it were an order of general or quarter sessions, and be enforced accordingly (e).

All expenses so directed to be paid by the board in respect of the repairs of any highway shall be deemed to be expenses incurred by the board in repairing such highway, and shall be recovered accordingly (f).

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(d) If this is *bonâ fide* done, the justices ought not to proceed further in the matter. *R. v. Odell*, 34 J. P. 534, as to the justices stating a case for the Q. B. Division see *Milton v. Faversham*, 31 J. P. 341.

(e) See 12 & 13 Vict. c. 45, s. 18; 36 & 37 Vict. c. 66, ss. 16, 34.

(f) See H. Act, 1878, s. 7, *post*, Chap. 14; H. Act, 1864, s. 32, *post*, p. 237.

## Part II.

The highway board may appear before the justices at petty sessions by their district surveyor or clerk, or any member of the board.

When obligation to repair is disputed (a).

XIX. When (b), on the hearing of any such summons respecting the repair of any highway, the liability to repair is denied by the waywarden on behalf of his parish, or by any party charged therewith, the justices (c) shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be *subpœnaed*, at the next assizes to be holden in and for the said county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein such highway is situate, against the inhabitants of the parish, or the party charged therewith, for suffering and permitting the said highway to be out of repair; and the costs (d) of such prosecution shall be paid by such party to the proceedings as the court before whom the case is tried shall direct, and if directed to be paid

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(a) See now H. Act, 1878, s. 10, *post*, Chap. 14. See H. Act, 1835, s. 95, *ante*, p. 152.

(b) The expression, "when the liability to repair is denied," is to bear the same construction as the expression "if the liability is denied" in H. Act, 1835, s. 95. *Reg. v. Farrer*, 35 L. J. M. C. 210.

(c) The power to direct an indictment to be preferred does not arise when the liability to repair is denied on the ground alone that the road is not a highway, and the liability is admitted if the road be in fact a highway, and the denial of the road being a highway is made *bond fide*. In order to give the justices such a power the liability must be denied on some ground other than that the road is not a highway, such as that someone else is bound to repair. *Reg. v. Farrer*, 35 L. J. M. C. 210; L. R. 1 Q. B. 558; *R. v. Odell*, 34 J. P. 534.

(d) Under the 95th section of H. Act, 1835, *ante*, p. 152, the costs of an indictment were, in any event, to be paid out of the highway rate. "The object of the alteration in this section appears to be that a prosecutor may no longer be encouraged, by getting his costs in any event, to prosecute groundless cases." BLACKBURN, J., in *Reg. v. Farrer*, 35 L. J. M. C. 210. Where on the trial of an indictment ordered by justices under the 25 & 26 Vict. c. 61, s. 19, for the non-repair of an alleged highway, the road is found not to be a highway, the court has no power to order costs. *R. v. Buckland*, 34 L. J. M. C. 178; *R. v. Lee*, 45 L. J. M. C. 55.

by the parish (e), shall be deemed to be expenses Chap. XII.  
incurred by such parish in keeping its highways in repair, and shall be paid accordingly.

[The following sections, viz., 20, 21, 22, 23, 24, are repealed by H. Act, 1864, s. 32, *post*, and other enactments noticed, *post*, p. 237, substituted; but such repeal is not to affect any rate made previously to the passing of that Act, or any legal proceeding or remedy for enforcing the same.]

[The 25th, 26th, and 30th sections are repealed by H. Act, 1864, sect. 36, but such repeal is not to affect any proceeding commenced previously to the passing of that Act. The substituted enactments sects. 36—44, in H. Act, 1864, are noticed, *post*, Chap. 13, (f).]

XXVII. The clerk to every highway board shall Clerk of highway board  
within such 30 days after the said audit (g), transmit to transmit  
such statement to one of Her Majesty's principal secretaries of state; and any such clerk who shall not within statement to secretary of state.  
the time aforesaid transmit the said statement to the said secretary of state, shall for every such offence, Penalty for neglect.  
upon a summary conviction for the same before two justices of the peace, be liable to a penalty not exceeding £10.

XXVIII. The secretary of state shall cause the Abstract of statements  
statements so transmitted to be abstracted, and the to be laid  
abstracts thereof to be laid before both Houses of before parliament.  
Parliament, with the other statements in relation to

(e) See H. Act, 1878, s. 7, *post*, Chap. 14.

(f) As to the accounts of the expenses of maintenance of main roads, to be kept by the highway authority, see H. Act, 1878, s. 18, *post*, Chap. 14. As to returns to be made of receipts and expenditure, see 42 & 43 Vict. c. 39, *post*, Part VII.

(g) See H. Act, 1864, s. 36. The H. Act, 1878, s. 9, *post*, Chap. 14, provides for the audit of accounts of highway districts and parishes; and see sect. 36 of H. Act, 1864, *post*, Chap. 13, which also relates to inspection of books of account of the board.

**Part II.** highways required to be abstracted and laid before parliament by the 12 & 13 Vict. c. 35 (a).

Secretary of state may cause form of statement to be prepared.

XXIX. It shall be lawful for one of Her Majesty's principal secretaries of state to cause to be prepared such forms for such statement as he may from time to time deem suitable, and also from time to time to alter the forms for the annual statement prescribed by the said Act (12 & 13 Vict. c. 35), but no statement shall be transmitted under that Act concerning parishes wholly within a highway district under this Act (b).

XXX. Repealed by H. Act, 1864, s. 36, *post*, Chap. 13.

Officers appointed by highway board to account to them when required.

XXXI. All officers appointed by the highway board shall, as often as required by them, render to them, or to such persons as they appoint, a true, exact, and perfect account in writing under their respective hands, with the proper vouchers, of all monies which they may respectively to the time of rendering such accounts have received and disbursed on account or by reason of their respective offices; and in case any money so received by any such officer remains in his hands the same shall be paid to the board, or to such person or persons as they in writing under their hands empower to receive the same; and if any officer refuses or wilfully neglects to render and give such account, or to deliver up such vouchers, or for the space of 14 days after being thereunto required by the board refuses or wilfully neglects to give up to them or to such person or persons as they appoint all books, papers, writings, tools, and things in his hands, custody, or power relating to the execution of his office, it shall be lawful for any justice of the peace for the county

(a) See the statute, *post*; and see note (f), *ante*, p. 205.

(b) See H. Act, 1864, s. 36, Chap. 13; H. Act, 1878, s. 9, Chap. 14.

where the officer so making default is or resides, upon application made to him for that purpose by or on behalf of the board, to make inquiry of and concerning any such default as aforesaid in a summary way, as well by the confession of the party as by the testimony of any credible witness or witnesses upon oath, and by warrant under his hand and seal to cause such money as may appear to him to be due and unpaid to be levied by distress and sale of the goods and chattels of such officer, rendering to him the overplus (if any), on demand after payment of the money remaining due and deducting the charges and expenses of making such distress and sale; and if sufficient distress cannot be found, or if it appears to any such justice in manner aforesaid that any such officer has refused or wilfully neglected to give such account, or to deliver up all books, papers, writings, tools, matters, and things in his custody or power relating to the execution of his office, the justice shall commit him to the house of correction or common gaol of the county where such offender is or resides, there to remain without bail until he gives a true and perfect account, and verifies the same in manner aforesaid, and produces and delivers up the vouchers relating thereto, and pays the money (if any) remaining in his hands as aforesaid according to the direction of the board, or has compounded with the board for such money and paid such composition (which composition the board are hereby empowered to make and receive), or until he delivers up such books, papers, and writings, tools, matters, and things as aforesaid, or has given satisfaction to the board concerning the same; but no officer who may be committed on account of his not having sufficient goods and chattels as aforesaid shall be detained in prison by virtue of this Act for any longer time than 6 calendar months.



## Part II.

*Supplemental Provisions.*

Provision  
as to extra-  
parochial  
places (a).

XXXII. Where in pursuance of 20 Vict. c. 19 intituled "An Act for the Relief of the Poor in Extra-parochial Places," any place is declared to be a parish, or where overseers of the poor are appointed for any place, such place shall for the purposes of this Act be deemed to be a parish separately maintaining its own highways (b); and where in pursuance of the same Act any place is annexed to any adjoining parish, or to any district in which the relief of the poor is administered under a local Act, such place shall for the purposes of this Act be deemed to be annexed to such parish or district for the purposes of the maintenance of the highways, as well as for the purposes in the said Act mentioned.

Provision  
for outlying  
part of  
parishes.

XXXIII. Where a part of a parish is not contiguous to the parish of which it is a part, such outlying part may at the discretion of the justices be annexed to a district, and, when so annexed, it shall, for all the purposes of the H. Acts, be deemed to be a parish separately maintaining its own highways.

By H. Act, 1864, s. 5, *post*, p. 222, certain places are to be deemed places separately maintaining their own highways.

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(a) As to the power of justices to appoint overseers, or otherwise deal with any extra-parochial place with a view to constituting it a highway parish, see H. Act, 1864, s. 9, *post*, p. 225. See 31 & 32 Vict. c. 122, s. 27.

(b) This does not render the inhabitants of a place formerly extra parochial liable in respect of the repair of a highway. *R. v. Inhab. of Central Wingland*, 46 L. J. M. C. 282; 2 L. R. Q. B. D. 349. *Et per* FIELD, J.:—"The intention, I think, was to make these places highway parishes, and the effect is to bring them within the general scheme of legislation with regard to highway districts. They may be put into such a district, and then will have a waywarden, and be represented upon the board, and so have a remedy against any persons who are liable to keep in repair the highway. The object was to bring those places, as it were, into one harmonious whole, and to prevent a shifting liability."

**XXXIV.** Where any highway which any body politic or corporate or person is liable to repair by reason of tenure of any land, or otherwise howsoever, [shall be adjudged in the manner provided by the principal Act to be out of repair] (c), the highway board of the district in which such highway is situate may, if they see fit (d), direct their surveyor to repair the same, and the expenses to be incurred in such repair shall be paid by the party liable to repair as aforesaid; and it shall be lawful for any justice, upon the application of any person authorized in this behalf by the highway board, to summon the party liable to pay such expenses to appear before two justices at a time and place to be named in such summons, and upon the appearance of the parties, or in the absence of either of them, it shall be lawful for such justices to hear and determine the matter, and make such order, as well as to costs or otherwise, as to them may seem just.

Chap. XII.

Expenses of repair of highways may be recovered from party liable to repair *ratione tenura*.

**XXXV.** Where any person or corporation is liable, by reason of tenure of lands or otherwise, to repair any highway situate in a highway district, the person or corporation (f) so liable may apply to any justice of the peace for the purpose of making such highway a highway to be repaired and maintained by the parish in

Highways repairable *ratione tenura* may be made repairable by the parish (e).

(c) This section is to be construed as if instead of the words within brackets the words were substituted "shall be adjudged in manner provided by the H. Act, 1862, to be out of repair" (H. Act, 1864, s. 23, *post* p. 233). As to proceedings under H. Act, 1862, where roads are out of repair, see sect. 18, *ante*, p. 202.

(d) If the highway board do not proceed under this section, proceedings can be taken under H. Act, 1835, s. 94, *ante*, p. 149.

(e) Compare H. Act, 1835, s. 62, *ante*, p. 115.

(f) By H. Act, 1864, s. 24, *post*, p. 233. The highway board also may apply for the purpose of making such highway a highway to be repaired and maintained by the parish in which the same is situate, and upon such application being made, the same proceedings may be had as upon the application of the person or corporation liable to repair the same.

**Part II.** which the same is situate; and such justice shall thereupon issue summonses requiring the waywarden of such parish, the district surveyor, and the party so liable to repair such highway as aforesaid, to appear before two or more justices in petty session assembled, and the justices at such petty sessions shall proceed to examine and determine the matter, and shall, if they think fit, make an order under their hands that such highway shall thereafter be a highway to be thereafter repaired and maintained by the parish, and shall in such order fix a certain sum to be paid by such person or corporation to the highway board of the district, in full discharge of all claims thereafter in respect of the repair and maintenance of such highway; and in default of payment of such sum the board may proceed for the recovery thereof in the same manner as for the recovery of penalties or forfeitures recoverable under this Act (a): provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair and maintenance of such highway exceeds £50, the same, when received, shall be invested in the name of the highway board of the district in some public government securities, and the interest and dividends arising therefrom shall be applied by such board towards the repair and maintenance of the highways within the parish in which such highway is situate; but when such sum does not exceed £50 the same or any part thereof, at the discretion of such highway board, shall from time to time be applied by such board towards the repair and maintenance of the highways within such parish: provided that any person aggrieved by any order of justices made in pursuance of this section may appeal to a court of general or quarter sessions holden within 4 months from the date of such order; but no such appeal shall be entertained unless the appellant has

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(a) See sect. 47, *post*, p. 218.

given to the other party to the case a notice in writing of such appeal, and of the matter thereof, within 14 days after such order, and 7 clear days at the least before such sessions, and has entered into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as may be by the court awarded; and upon such notice being given, and such recognizance being entered into, the court at such sessions shall hear and determine the matter of the appeal, and shall make such order thereon, with or without costs to either party, as to the court may seem meet :

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From and after the making of such order by the justices, or by the court on appeal, as the case may require, such highway shall be repaired in like manner and at the like expense as highways which a parish is liable to repair.

XXXVI. Where the inhabitants of any parish are desirous of undertaking the repair and maintenance of any driftway (b), or any private carriage or occupation road, within their parish, in return for the use thereof, the district surveyor may, at the request of the inhabitants of such parish assembled in a vestry duly convened for the purpose, and with the consent in writing of the owner and the occupier of every part thereof, apply to the justices in petty sessions to declare such driftway or road to be a public highway to be repaired at the expense of the parish; and upon such application being made, it shall be lawful for the justices to declare the same to be a public carriage road to be repaired at the expense of the parish.

Provision as to drift way or private road.

XXXVII. No toll shall be demanded by virtue of any Act of Parliament on any turnpike road from the

Surveyor or highway board ex.

(b) See *ante*, p. 1.

**Part II.**  
empted from  
turnpike  
tolls.

surveyor of a highway board when executing or proceeding to execute his duties as such surveyor, and all provisions applicable to the exemptions in the Act of the 3rd Geo. 4, c. 126, shall apply to the case of the exemptions conferred by this enactment.

Limiting  
jurisdiction  
of justices.

**XXXVIII.** No justice of the peace shall act as such in any matter in which he has already acted as a member of the highway board, and in which the decision of such board is appealed against (*a*).

Power to  
alter high-  
way dis-  
tricts.

**XXXIX.** Any highway district formed under this Act may from time to time be altered by the addition of any parishes in the same or in any adjoining county, or the subtraction (*b*) therefrom of any parishes (*c*), and new highway districts may be formed by the union of any existing highway districts in the same or in any adjoining county, or any parishes forming part of any existing highway districts, or any highway district may be dissolved; but any such alteration of existing districts, or formation of new districts, or dissolution of any district, shall be made by provisional and final orders of the justices; and all the provisions of this Act with respect to the formation of highway districts and provisional and final orders of justices, and the notices to be given of and previously to the making of such orders, and all other proceedings relating to the forma-

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(*a*) See H. Act, 1864, s. 46, *post*, p. 248, which in some respects alters this enactment.

(*b*) By H. Act, 1864, sect. 14, *post*, p. 228, this is extended to the separation of any townships, tithings, hamlets, or places, separately maintaining their own highways, which may have been consolidated by any previous order of justices, and to an alteration in the number of waywardens in any parish.

(*c*) By H. Act, 1864, s. 14, *post*, p. 228, the powers conferred on justices by the 39th section of the "H. Act, 1862," shall be deemed to extend to the separation of any townships, tithings, hamlets, or places separately maintaining their own highways which may have been consolidated by any previous order of the justices, and to an alteration in the number of waywardens of any parish.

tion of highway districts, shall, in so far as the same are applicable, extend to such alteration of existing or formation of new districts, or dissolution of districts, as is mentioned in this section; and in addition thereto provision shall be made, if necessary, in any orders of justices made under this section for the adjustment of any matters of account arising between parishes or parts of districts in consequence of the exercise of the powers given by this section. Where any parish is added to or any district united with any district in another county, the final order of the justices of the county in which such parish or district is situate shall not be confirmed by them until they shall have received the approval (d) of their provisional order for such addition or union from the justices of the county in which the district is situate to or with which such addition or union is to be made. Where any highway district is dissolved, or where any parish is excluded from any highway district, the highways in such district or parish shall be maintained, and the provisions of the principal Act in relation to the election of surveyors and to all other matters shall apply to the said highways, in the same manner as if such highways had never been included within the limits of a highway district.

As to the costs of parishes applying to be removed from one district to another, see H. Act, 1864, s. 15, *post*, p. 228.

By H. Act, 1864, s. 17, *post*, p. 229, where an alteration is made in part only of a highway district, the residue of the district is not affected thereby.

XL. If any highway board make default in holding its first meeting (e) in pursuance of this Act, such board shall not thereupon become disqualified from

Provision in  
case of  
failure of  
board to

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(d) This approval must be testified by provisional and final orders of the justices of the first-mentioned county. H. Act, 1864, s. 14, *post*, p. 228.

(e) See H. Act, 1864, s. 10, *post*, p. 226.

**Part II.**  
hold first  
meeting.

acting, but the justices in general or quarter sessions shall, on the application of any persons liable to pay highway rates within the district, make such order as they think fit for the holding of such board at some other time, and any order so made shall be deemed to be an order capable of being removed into the Court of Queen's Bench, in pursuance of the Act 12 & 13 Vict. c. 45, (a) and may be enforced accordingly, and the costs of any application to the court of quarter sessions in pursuance of this section shall be defrayed out of the district fund of the board.

Reservation  
of right to  
adopt Local  
Government  
Act (b).

**XLI.** Any parish or part of a parish included in a highway district may adopt the Local Government Act (b) in the same manner and under the circumstances in and under which it might have adopted the same if it had not been included in such district; and upon such adoption being made such parish or part of a parish shall cease to form part of such district, subject nevertheless to the payment of any contribution that may at the time of such adoption be due from such parish or part of a parish to the highway board.

#### *Application of Principal Act.*

Construction  
of H. Act,  
1835, and this  
Act.

**XLII.** The following regulations shall be observed with respect to the construction of the principal Act [H. Act, 1835, *ante*, p. 71] and this Act:

1. This Act shall be construed as one with the principal Act so far as is consistent with the provisions of this Act (c):
2. The 9th section of the principal Act, whereby it

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(a) See s. 18: and see 36 and 37 Vict. c. 66, ss. 16, 34.

(b) This Act is now repealed by 38 & 39 Vict. c. 55, s. 343, sub-sect. 5. See Part III. See *Driver v. Kingston Highway Board*, 35 J. P. 696.

(c) By H. Act, 1864, s. 2, that Act is, so far as is consistent with the tenor thereof, to be construed as one with the "H. Act, 1862." See *R. v. Heath*, L. R. 1 Q. B. 218.

is enacted that a surveyor may be appointed by the inhabitants of a parish with a salary, shall not apply to any parish within any district formed under this Act : Chap. XII.

3. The 10th section of the principal Act, whereby it is enacted that the surveyor or surveyors at the time of passing his or their accounts as therein mentioned shall deliver to the justices a statement in writing of the name and residence of the person or persons appointed to succeed him or them as a surveyor or surveyors, shall not apply to any parish within any district formed under this Act :
4. The 13th, 14th, 15th, 16th, and 17th sections of the principal Act, providing for the formation of parishes into districts, and the 18th and 19th sections of the principal Act, providing for the appointment of a board in large parishes, shall not apply to any parish within any district formed under this Act :
5. The penalty imposed by section 20 [*ante*, p. 84] of the principal Act on the surveyor for neglect of duty shall not apply to a highway board constituted under this Act :
6. Any summons or notice, or any writ or any proceeding, at law or in equity, requiring to be served upon the board, may be served by the same being left at or transmitted through the post in a prepaid letter directed to the office of the board, or being given personally to the district surveyor or clerk of the board (*d*) :
7. The 35th section of the principal Act, whereby it is provided that the ratepayers of any parish may divide amongst themselves the carriage of materials in manner therein mentioned, shall

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(*d*) See as to service of notices, summonses, precepts, &c., issued by the board, H. Act, 1864, s. 26, *post*, p. 235.



Part II.

not apply to any parish within any district formed under this Act :

8. The 39th, 40th, 43rd, 44th, and 45th sections of the principal Act [H. Act, 1835], relating to the accounts of surveyors shall not apply to the highway board of any district formed under this Act.

Relative  
duties of  
outgoing  
surveyors  
and highway  
board.

XLIII. On the formation of a highway district the following regulations shall be enacted with respect to the surveyors and the highway board :—

1. No surveyor shall be appointed under the principal Act for any parish within such district :
2. The outgoing surveyor of every parish within the district shall continue in office until 7 days after the appointment of the district surveyor by the highway board of the district of such outgoing surveyor, and no longer ; and he may recover any highway rate made and then remaining unpaid, in the same manner as if this Act had not been passed (*a*), and the money so recovered shall be applied, in the first place, in reimbursing any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction, and the surplus (if any) shall be paid by him to the treasurer of the highway board ; and he shall be entitled to receive from the highway board any sum (not exceeding £5) (*b*) which on the allowance of his accounts shall be found due to him as such surveyor after the collection and expenditure of the whole

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(*a*) His powers to recover the rate are not limited to the seven days : they continue till the whole rate is collected. *R. v. Bluffield*, 29 J. P. 247 ; 11 L. T. (N.S.) 337.

(*b*) By H. Act, 1864, s. 28, this section is to be construed as if the words "not exceeding £5" were omitted. See Stat. Law Rev. Act, 1875.

of the highway rate made in such parish during the last year : Chap. XII.

3. The highway board shall, for the purposes of the principal Act, except that of levying highway rates, be deemed to be the successor in office of the surveyor of every parish within the district.

XLIV. All the provisions (c) of the principal Act for widening, diverting, and stopping (d) up highways shall be applicable to all highways which now are or may hereafter be paved, repaired, or cleansed under or by virtue of any local or personal Act or Acts of parliament, or which may be situate within the limits of any such Act or Acts, except highways which any railway company, or the owners, conservators, commissioners, trustees, or undertakers of any canal, river, or inland navigation, are liable by virtue of any Act of parliament relating to such railway, canal, river, or inland navigation to make, maintain, repair, or cleanse.

XLV. "Whereas there are in certain boroughs in England and Wales roads and highways that are now and have heretofore been repaired by the inhabitants of the several parishes or townships within which such roads and highways are situated, and who also contribute and pay to the general rates levied for the repair of the public streets, roads, and highways maintained and kept in repair by the councils of such boroughs, by reason whereof a great burthen is imposed upon the ratepayers of the said parishes and townships; and it being doubtful whether the council of such boroughs have the power to adopt such parish roads and highways, or to apply the rates collected in such boroughs in repairing the same:" be it enacted, that it shall and may be lawful for the council of every such borough in England

(c) See sects. 82-93, *ante*, pp. 134-148.

(d) See H. Act, 1864, s. 21, *post*, p. 231; and H. Act, 1878, s. 24, *post*, Chap. 14.

**Part. II.** and Wales, upon the petition of the majority of the ratepayers of such parishes or townships present at a public meeting duly convened, to adopt all or any of such parish roads and highways as the council shall in its discretion consider advisable, and to apply the rates levied and collected by the said council for the repair of the public streets, roads, and highways within such borough in repairing and maintaining such parish roads and highways : provided always, that it shall be competent for such council, previous to adopting such parish roads and highways, to require the provisions contained in any local Act applying to the public streets, roads, and highways of such borough to be complied with.

District  
highway  
boards may  
permit  
landowners  
to erect  
fences with-  
out incurring  
liability to  
repair high-  
ways (a).

XLVI. No person through whose land a highway passes, which is to be repaired by the parish, shall become liable for the repair of such highway by erecting fences between such highway and the adjoining land, if such fences are erected with the consent in writing of the highway board of the district within which such highway is situate in the case of a place within the jurisdiction of a highway board, and in the case of any other place with the consent of the surveyor or other authority having jurisdiction over the highway.

Recovery of  
penalties.

XLVII. All penalties under this Act, and all monies recoverable as penalties, may be recovered summarily before any two or more justices in the manner directed by the 11 & 12 Vict. c. 43, and any Act amending the same; but where any sum adjudged to be paid under this Act in respect of such penalties or monies exceeds £5, an appeal may be had by any person aggrieved to a court of general or quarter sessions in manner provided by the 110th section of 24 & 25 Vict. c. 96, intituled "An Act to consolidate and amend the Statute

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(a) See *ante*, p. 31.

Law of England and Ireland relating to Larceny and Chap XII.  
other similar Offences" (b).

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(b) By 24 & 25 Vict. c. 96, s. 110, "in all cases where the sum adjudged to be paid on any summary conviction shall exceed £5, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than 12 days after the day of such conviction for the county or place wherein the cause of complaint shall have arisen ; provided, that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within 3 days after such conviction, and 7 clear days at the least before such sessions, and shall also either remain in custody until the sessions, or shall enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded ; or if such appeal shall be against any conviction, whereby only a penalty or other sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal ; and upon such notice being given, and such recognizance being entered into, or such deposit being made, the justice before whom such recognizance shall be entered into, or such deposit shall be made, shall liberate such person if in custody ; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal or the affirmance of the conviction shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment ; and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction, and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted, and in any case where after any such deposit the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted ; and in every case where any conviction shall be quashed on appeal as aforesaid the clerk of the peace or other proper officer, shall forthwith endorse on the conviction a memorandum that the same has been so quashed ; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where

Part II.

## SCHEDULE (a).

## FORM (A.)

NOTICE is hereby given, that at the court of general or quarter sessions to be held on the \_\_\_\_\_ day of \_\_\_\_\_, a proposal will be made to divide the county of Lincoln into highway districts [or to divide the parts of Holland, in the county of Lincoln, into highway districts, or to constitute the county of Rutland a highway district, or to constitute the parishes of Alford, Castle Carey, and Lovington, in the county of Somerset, a highway district.]

## FORM (B.)

WHEREAS at a court of general or quarter sessions, held on the \_\_\_\_\_ day of \_\_\_\_\_ last, a provisional order was made in the words following ; that is to say, [*here set out the provisional order.*]

Notice is hereby given, that the confirmation of the said provisional order by a final order will be taken into consideration by the justices at the court of general or quarter sessions to be held on the \_\_\_\_\_ day of \_\_\_\_\_ next.

such copy or certificate would be sufficient evidence of such conviction.<sup>b</sup> An appeal also lies against a conviction or order under Sum. Jur. Act, 1879, s. 32, *ante*, p. 69.

As to recovery of fines and expenses, and as to appeals, under H. Act, 1878, see sects. 6 and 37 of that Act, *post*, Chap. 14.

(a) [This Schedule is, by the H. Act, 1864, s. 27, repealed so far as relates to the proceedings of highway boards, which are hereafter to be subject to the regulations prescribed by first schedule annexed to that statute, see *post*, p. 254.]

CHAPTER XIII.

Chap. XIII.

HIGHWAY ACT, 1864.

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27 & 28 VICT. CAP. 101.

*An Act to amend the Act for the better Management of  
Highways in England.*

[29th July, 1864.]

WHEREAS it is expedient to amend the 25 & 26 Vict.  
c. 61, intituled "An Act for the better Manage-  
ment of Highways in England:" Be it enacted, &c.,  
as follows :

*Preliminary.*

*Preliminary.*

I. The Acts hereinafter mentioned may be cited <sup>Short title</sup> for all purposes by the short titles following ; that <sup>of Highway</sup> Acts.  
is to say,

The Act 5 & 6 Will. 4, c. 50, intituled "An  
Act to consolidate and amend the Laws relating  
to Highways in that part of Great Britain called  
England, by the short title of the ' Highway  
Act, 1835 :'"

The said Act 25 & 26 Vict. c. 61, by the short title  
of the " Highway Act, 1862 :"

This Act by the short title of the " Highway  
Act, 1864."

All the above mentioned Acts, and any Acts passed  
or to be passed amending the same shall be included  
under the short title of "The Highway Acts" (b).

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(b) See *ante*, p. 214.

**Part II.** II. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the "H. Act, 1862" (a).

Definition of "poor law parish," "highway parish," "highway rate," and "county."

III. "Poor law parish" shall mean a place that separately maintains its own poor :

"Highway parish" shall mean a place that after the constitution of a highway district separately maintains its own highways, and is entitled to return a waywarden or waywardens to the highway board of the district :

"Highway rate" shall include any rate, whether poor rate or not, out of the produce of which monies are payable in satisfaction of precepts of a highway board :

"County" shall include any division of a county that has a separate treasurer (b).

*Amendments as to orders of justices.*

Amendment of sect. 6 of Highway Act of 1862.

#### *Amendments as to Orders of Justices.*

IV. Where more highway districts than one are comprised in any order of justices, whether provisional or final, and whether made before or after the passing of this Act, the formation of each of such districts is to be deemed independent of the formation of any other district, and the order shall for all purposes be construed and take effect as if a separate order had been made in respect of each district ; and any variation in a provisional order altering the parishes in any one or more districts comprised in that order shall make that order provisional only as to the particular district or districts in which the alterations are made, and not as to any other district or districts included in the same order (c).

Certain places to be deemed places sepa-

V. Any parish, township, tithing, hamlet, or other place having a known legal boundary in which there

(a) See *ante*, p. 214.

(b) *Id.* p. 185.

(c) *Id.* p. 188.

are no highways repairable at the expense of the place, Chap. XIII. or in which the highways are repaired at the expense of <sup>rately main-</sup> any person, body politic or corporate, by reason of <sup>taining</sup> any grant, tenure, limitation, or appointment of any <sup>their own</sup> highways. charitable gift, or otherwise howsoever than out of a highway rate or other general rate, shall, for the purposes of the H. Acts, be deemed to be a place separately maintaining its own highways (d).

Where part of a parish is, in pursuance of the Local Government Act, 1858, Amendment Act, 1861, sect. 9, treated as forming part of a district constituted under the Local Government Act, 1858 (e), for all purposes connected with the repair of highways and the payment of highway rates, but for no other purpose, such part shall, for the purposes of the H. Act, 1862, and this Act, be deemed to be a place separately maintaining its own highways, and capable of being included in a highway district, without requiring the consent of the local board to be given.

Where the highways of one part of a parish are, in pursuance of a private Act of parliament, repairable out of a different rate from that out of which the highways of the other part are repairable, each of such parts shall, for the purposes of the H. Acts be deemed to be a place separately maintaining its own highways (f).

VI. There shall be repealed so much of the 5th <sup>Part o</sup> section of the H. Act, 1862, as provides that, "when <sup>sect. 5 of</sup> it is proposed that only part of a county shall be divided <sup>Highway Act</sup> into a highway district, not less than two out of the <sup>of 1862,</sup> five justices making such proposal shall be resident in <sup>repealed, and</sup> the said district;" and in lieu thereof be it enacted, <sup>other</sup> that when it is proposed that only part of a county is <sup>provisions</sup> <sup>enacted.</sup>

(d) See H. Act, 1862, ss. 32, 33, *ante*, p. 208, *R. v. Gascoign*, 29 J. P. 389.

(e) This Act is repealed by 38 & 39 Vict. c. 55, s. 343, but such repeal is not to affect any rights acquired, &c. See Part III.

(f) See *ante*, p. 186.



**Part II.** to be constituted a highway district, not less than two out of the five justices making such proposal shall be resident in the said district, or acting in the petty sessional division in which such district or some part thereof is situate (a).

Amendment  
of sect. 7  
of Highway  
Act of 1862,  
as to com-  
bination of  
townships, &c.

VII. The power given by the 7th section of "The H. Act, 1862," of combining townships, tithings, hamlets, or places, separately maintaining their own highways, and situate in a poor law parish, shall extend to combining any two or more of such townships, tithings, hamlets, or places, and any combination so formed shall for all the purposes of the H. Acts be deemed to be a highway parish.

Where a township, tithing, hamlet, or other place separately maintaining its own highways is situate in two or more poor law parishes, each part of such township, tithing, hamlet, or other place may be combined with the parish in which that part is situate.

The justices may, by their provisional and final order, declare that any poor law parish within their jurisdiction, or residue of a poor law parish, after excluding such part, if any, as is prohibited by the "H. Act, 1862," either wholly or without the consent of the governing body, from being included in the highway district (b), shall henceforward become a highway parish; and upon such declaration being made such poor law parish, or residue of a poor law parish, shall thereafter be a highway parish entitled to return a waywarden or waywardens to the highway board of the district in which it is included; and no rate shall be separately levied for the maintenance of the highways, and no separate waywardens be elected in any township, tithing, hamlet, or other subdivision, of such poor law parish, or residue of a poor law parish.

(a) See *ante*, p. 187.

(b) See H. Act, 1862, s. 7, *ante*, p. 190, *R. v. Gascoign*, 29 J.P. 389.

Where, previously to the passing of the provisional Chap. XIII. order forming a highway district, no surveyors or waywardens have been elected within any highway parish in that district, and where the mode of electing a waywarden or waywardens in such parish is not provided by this Act or the "H. Act, 1862," the justices shall, by their provisional and final orders constituting the district, or by any subsequent provisional and final orders, make provisions for the annual election of a waywarden or waywardens for such parish (c).

VIII. Where a parish or place separately maintain- Provision for places partly within and partly without a borough. ing its own highways is situate partly within and partly without the limits of a borough, the justices may by their provisional and final orders include in a highway district the outlying part of such parish or place; and where the outlying part of a parish or place situate as aforesaid has been, previously to the passing of this Act, or may be hereafter, included in a highway district, each part of such parish or place shall for all the purposes of the H. Acts be deemed to be a place separately maintaining its own highways; and a waywarden or waywardens shall be elected by the ratepayers in each such part at such time and in such manner as may be provided by the said justices (d).

IX. The justices in petty sessions may appoint over- Power of justices as to extra-parochial places. seers, or otherwise deal with any extra-parochial place with a view to constituting it a highway parish or part of a highway parish, in the same manner as the justices may deal with such place for the purpose of constituting it a place or part of a place maintaining its own poor, in pursuance of the powers for that purpose given by the Act 20 Vict. c. 19 (e).

(c) See *ante*, p. 192.

(d) See H. Act, 1862, s. 7, *ante*, p. 192.

(e) See sects. 32, 33, *ante*, p. 208.

## Part II.

Part of sect.  
6 of H. Act  
of 1862 as to  
meetings of  
board repealed  
and other  
provisions  
enacted.

X. [The paragraph No. 5 in the 6th section of the H. Act, 1862, shall be repealed, and in lieu thereof be it enacted] (a),

The first meeting of the highway board after the formation of a district shall be held at such time (b) as may be appointed by the provisional or final order of the justices, so that the time appointed be not more than 7 days after the expiration of the time limited by law for the election of waywardens (c), or, in the case of a special day being appointed for such election as hereinafter mentioned, be not more than 21 days after that day.

The day appointed for the first meeting of the board shall for all the purposes of the H. Acts be deemed to be the day of the formation of the district (d); and the surveyor for the time being of every parish within the district shall continue in office until 7 days after the appointment of the district surveyor, and no longer (e).

Power to  
justices to  
bring H. Act  
into operation  
on a par-  
ticular day.

XI. In forming a highway district under the "H. Act, 1862," the justices may, for the purpose of avoiding delay in bringing the Act into operation, appoint by their final order a day (f) on which the first election of waywardens as members of the highway board is to take place in the district.

On the day appointed for the election waywardens shall be elected in every parish in the district entitled to elect such officers by the same persons and in the same manner by and in which waywardens are elected under the "H. Act, 1862" (g), and all the provisions of

(a) See *ante*, p. 190 ; Statute Law Rev. Act, 1875.

(b) The place of meeting should be mentioned ; see 1st Schedule to this Act, *post*, p. 254.

(c) See H. Act, 1862, s. 10, *ante*, p. 196. *Reg. v. JJ. of Lincol.*, 35 L. J. M. C. 90 ; L. R. 1 Q. B. 648.

(d) See H. Act, 1862, s. 40, *ante*, p. 213.

(e) See *R. v. Bluffield*, *ante*, p. 216.

(f) As to first meeting of board, see sect. 10, *supra*.

(g) See sect. 10 of this Act, *ante*, p. 196.

the H. Acts relating to the qualification of surveyors or waywardens, and to the appointment of surveyors and waywardens by justices in the event of no election taking place shall apply accordingly (*h*); but the waywardens elected under this section shall continue in office only until the time at which the next annual election of surveyors would have taken place in the several parishes of the district if the same had not been constituted a highway district, and at that time new waywardens shall be elected in manner provided by the H. Acts (*i*).

Chap. XIII.

XII. No order of the justices forming a highway district shall be invalidated by reason of its not being published in the *London Gazette* (*k*); and where any reference is made in any section (*l*) of the H. Act, 1862, to the date of the publication in the *Gazette* of the order, such section shall be construed as if the date of the making of the final order under which the district is formed were substituted for "the date of the publication in the *Gazette* of the order under which the district is formed;" and any copy of the provisional or final order of the justices forming a highway district, certified under the hand of the clerk of the peace to be a true copy, shall be receivable in all courts of justice and in all legal proceedings as evidence of the formation of the district and of the matters in the said order mentioned (*m*).

Publication  
of orders in  
*Gazette* made  
permissive.

XIII. Contiguous places situate in different counties and places situate partly in one county and partly in

As to union  
of parishes  
in different  
counties.

(*h*) See H. Act, 1835, ss. 6, 7, 11, *ante*, p. 73 *et seq.* and H. Act, 1862, s. 10, *ante*, p. 196.

(*i*) By H. Act, 1878, s. 11, *post*, p. 265, waywardens continue in office till the 30th April in the year following the year in which they were elected. See *ante*, p. 196.

(*k*) H. Act, 1862, s. 6, *ante*, p. 190.

(*l*) See H. Act, 1862, s. 8, *ante*, p. 193.

(*m*) See H. Act, 1862, s. 8, *ante*, p. 193.

**Part II**

another county or counties (a) shall, for the purpose of being united in one highway district, be deemed to be subject to the jurisdiction of the justices of any county, who may make a provisional and final order constituting them a highway district, in the same manner as if all such places or parts of places were situate in such last-mentioned county; subject to this proviso, that the provisional and final orders of the justices of the said county shall be of no validity unless provisional and final orders to the same effect are passed either concurrently with or subsequently to the first-mentioned provisional and final orders by the justices of every other county in which any of the said places or parts of places are situate.

Amendment  
of sect. 39 of  
H. Act, 1862.

XIV. The approval of the justices of any county to any provisional order made by the justices of another county affecting any place in such first-mentioned county, in pursuance of the 39th section of the "H. Act, 1862," shall be testified by provisional and final orders of the justices of the said first-mentioned county (b).

The powers conferred on justices by the 39th section of the "H. Act, 1862," shall be deemed to extend to the separation of any townships, tithings, hamlets, or places separately maintaining their own highways which may have been consolidated by any previous order of the justices, and to an alteration in the number of way-wardens of any parish.

As to the  
costs of  
parishes  
applying to  
be removed  
from one  
district to  
another.

XV. Where, after the formation of a highway district an application is made by any parish in that district to any court of general or quarter sessions, praying that the said parish may be removed from that district, all costs incidental to or consequential on such

(a) See H. Act, 1862, s. 7, *ante*, p. 190.

(b) See H. Act, 1862, s. 39, *ante*, p. 212.

application and the removal of the said parish shall, **Chap. XIII.** unless the court otherwise directs, be paid by the parish that has made the application in such manner as the said court may direct. The amount of such costs shall be raised in the same manner as if they were expenses incurred in maintaining and keeping in repair the highways of that parish (c).

XVI. No order of the justices forming a highway district, whether made before or after the passing of this Act, shall be void by reason that it includes in such district a place which the justices are not entitled to include under the provisions of this Act or the "H. Act, 1862," or one of such Acts; and any order containing such prohibited place shall be construed and take effect as if that place had not been mentioned therein. As to validity of order of justices.

All expenses properly incurred by the justices of any county in maintaining the validity of any provisional or final order made by them shall be payable out of the county rate of that county.

XVII. All powers and jurisdictions vested in justices by the H. Act, 1862, and this Act, or either of such Acts, may from time to time be exercised in relation to highway districts, highway boards, and highway parishes already formed, as well as upon the occasion of forming new highway districts, boards, or parishes; and where an alteration is made in part only of a highway district the residue of that district shall not be affected thereby, but shall continue subject to the H. Acts in the same manner as if no such alteration had been made (d). Extent of powers of justices.

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(c) See as to the costs, H. Act, 1878, s. 7, *post*, p. 261; H. Act, 1835, s. 27; H. Act, 1862, s. 39.

(d) As to the effect of alteration upon parish excluded from a district, see H. Act, 1862, s. 39, *ante*, p. 212.

**Part II.** XVIII. The expression "provisional and final order," as used in this Act, shall mean a provisional and final order passed and published in manner provided by this Act, and the "H. Act, 1862," with the necessary variations as to notices and otherwise (a).

**Definition of "provisional and final orders."**

*Miscellaneous Amendments.*

**Appointment and vote of waywardens.** XIX. Every waywarden, before taking his seat as a member of a highway board, shall produce a certificate of his having been duly elected or appointed a waywarden, and such certificate shall, in the case of an elected waywarden, be signed by the chairman of the vestry or other meeting at which he was elected; and in the case of a waywarden appointed by justices, be signed by the justices making the appointment (b).

A waywarden may sit as such for more places than one, but he shall be entitled to one vote only as waywarden.

**Power to waywardens to contract for supply or cartage of materials.** XX. Whereas doubts are entertained whether the 46th section of the H. Act of 1835 applies to a highway district: be it enacted, that that section shall not apply to the highway board of any highway district or to any parish within any highway district.

Notwithstanding anything contained in the 26 & 27 Vict. c. 61 (c), or in any other Act, any waywarden

(a) See H. Act, 1862, ss. 5, 6, 8, *ante*, pp. 187—193.

(b) See H. Act, 1862, s. 10, *ante*, p. 196, as to election of waywardens.

(c) By this Act after reciting that it is expedient that waywardens appointed under H. Act, 1862, should be prevented from contracting for any works to be executed under the said Act within their own districts: Be it enacted, &c., as follows:—

I. No such waywarden shall directly or indirectly, in his own name or in the name of any other person or persons, contract for the repair of any road, or for any other work to be executed under the provisions of the said recited Act within the parish for which he is elected waywarden, or within any other parish in the

may contract for the supply or cartage of materials within the parish for which he is waywarden, with the license of two justices assembled at petty sessions, such licence to be granted on the application of the clerk of the highway board, who must be authorized to make such application by a resolution of his board assembled at a meeting of which notice has been given. Chap. XIII.

XXI. When any highway board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like (e) proceedings shall be had as where application is made under the "H. Act, 1835," (f) to procure the stopping up of any highway, save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly; and for the purpose of such proceedings under this enactment, such variation shall be made in any notice (g), certificate, or other matter

Provisions  
for discon-  
tinuance of  
maintenance  
of unneces-  
sary high-  
ways (d).

same district, under the pain of forfeiting the sum of £10, with full costs of suit to any person or persons who shall sue for the same by action of debt in any county court within the jurisdiction of which the parish in which the roads to be repaired, or the other work so contracted for, is situate. See *Wakefield v. Seneschall*, 29 J. P. 375.

II. It shall not be lawful for any highway board to pay knowingly for any repair or work so contracted for, and any money paid by any board under any such contract shall be recoverable by them with full costs from the person or persons to whom the same shall have been paid by action of debt in any of H. M.'s courts of record at Westminster, if the same shall amount to above £50, or in any county court as aforesaid if below that amount, and the balance so recovered, after paying all expenses, shall be placed to the credit of the district fund.

III. This Act shall be construed with and held to be part of the said recited Act.

(d) See the H. Act, 1878, s. 24, *post*, p. 274, which contains a similar provision to, and later than this.

(e) This includes the right to appeal, &c. *R. v. Surrey, JJ.*, L. R. 5 Q. B. 87, 466; 39 L. J. M. C. 49.

(f) See sects. 84, &c., *ante*, p. 138.

(g) See *R. v. JJ. of Surrey*, where there were 3 roads part of one system.



**Part II.**

preliminary to the making of such order as the nature of the case may require : Provided that if at any time thereafter, upon application of any person interested in the maintenance of such highway after one month's previous notice in writing thereof to the clerk of the highway board for the district in which such highway is situated, it appear to any court of general or quarter sessions of the peace that from any change of circumstances since the time of the making of any such order as aforesaid under which the liability of the parish to repair such highway has ceased the same has become of public use, and ought to be kept in repair by the parish, they may direct that the liability of the parish to repair the same shall revive from and after such day as they may name in their order, and such liability shall revive accordingly as if the first-mentioned order had not been made ; and the said court may by their order direct the expenses of and incident to such application to be paid as they may see fit.

Highway board may contract to repair highways for the repair of which other parties are liable.

XXII. The highway board of any district may from time to time contract for any time not exceeding 3 years with any person or body of persons, corporate or unincorporate, to repair any highways, turnpike roads, or roads over county or other bridges, or any part thereof, for the repairing of which such persons or body of persons are liable ; and any persons or body of persons liable to repair any roads may contract with the highway board for the repairing any highways, inclusive as aforesaid (a), or any part thereof, which the highway board is liable to make or repair ; and the money payable under any contract made in pursuance of this section shall be raised in the same manner and be paid out of the same rates as would have been applicable to defray the expenses of the repair of such

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(a) *i. e.*, *Semble*, turnpike roads or roads over bridges.

highways if no contract had been made in respect Chap. XIII.  
thereto.

XXIII. Section 34 of the "H. Act, 1862," shall be construed as if, instead of the words "shall be adjudged in the manner provided by the principal Act to be out of repair," the words were substituted, "shall be adjudged in manner provided by the "H. Act, 1862," to be out of repair" (see *ante*, p. 209.)

Amend-  
ment of  
section 34  
of Highway  
Act, 1862.

XXIV. The highway board may apply, under sect. 35 of the "H. Act of 1862," for the purpose of making any highway to which that section refers a highway to be repaired and maintained by the parish in which the same is situate, and upon such application being made, the same proceedings may be had as upon the application of the person or corporation liable to repair the same.

Amend-  
ment of  
section 35  
of Highway  
Act of 1862.

XXV. The 74th section of the "H. Act, 1835," shall be repealed, and instead thereof be it enacted, if any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine (*b*), is

Sect. 74 of  
5 & 6 Will. 4.  
c. 50, re-  
pealed, and  
other provi-  
sions made

(*b*) Where horses were found grazing at the side of a *turnpike* road, and a carter, by his master's order, attending to them, and the justices found that the horses were not *straying*, because they were under the control of the carter. The Court of Queen's Bench held that they were right in deciding that no offence had been committed. *Morris v. Jeffries*, 35 L. J. M. C. 143; L. R. 1 Q. B. 261.

But where a boy, under his master's orders, took some sheep and lambs along a highway, and they stopped and grazed about the road for several hours, some of them lying down in the middle of the road, some on the sides, some grazing; the boy part of the time walking about, and part lying down; and the justices convicted the owner of the sheep for allowing them to "lie about" the road—finding as a fact that they were under the control of a keeper. *Held*, that they were right. MELLOR, J., observing, "I think the section constitutes two offences—one the suffering animals to stray upon a highway without any one to exercise a control over them; and the other, the permitting them to be lying about on the highway, even although a keeper should be

**Part II.**  
as to cattle  
found stray-  
ing, &c., on  
highways.

at any time found straying on or lying about any highway, or across any part thereof, or by the sides thereof (except on such parts of any highway as pass over any common or waste or uninclosed (*a*) ground), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding 5*s.*, to be recovered in a summary manner, together with the reasonable expense of removing such animal from the highway where it is found to the fields or stable of the owner or owners, or to the common pound (*b*) (if

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with them." *Lawrence v. King*, 37 L. J. M. C. 78; L. R. 3 Q. B. 345. In *Hortwood v. Goodall*, 36 J. P. 486, a shepherd was driving 100 sheep from one farm to another along the highway. One day he was seen to rest for a quarter of an hour, when the sheep began to eat the grass and hedges, and some to stand on the highway. On another day the sheep had got half a-mile a-head of him, and were eating the grass and standing on the highway when he came up to them; it was *held* that the justices could only convict the owner for his sheep being found straying on the highway if they were satisfied that the shepherd was not *bond fide* driving the sheep all the while—that resting occasionally during the progress was not inconsistent with driving.

(*a*) A highway had wide strips of grass on each side and then fences, the strips belonging to F., and the land beyond the fences to different owners. F. was rated separately to the poor-rate for these strips, and there were gates at each end of them across the highway. One day he sent out 8 horses and a cow to pasture on these strips, and a man with a whip was lying on the grass 30 yards from the cattle, which wandered over the road. On an information against F. for suffering and allowing the horses and cow to stray upon the highway, it was *held* that the strips were not uninclosed land within the meaning of this section, that no question of title arose in the case; that F. was liable in the same way as a stranger would be if he allowed his cattle to lie or stray on the highway, and that he was rightly convicted. *Freestone v. Cuswell*, L. R. 4 Q. B. 516, 33 J. P. 581.

Certain trustees were authorized to let the herbage of a bank (on the top of which was a highway) made to protect drainage districts. B. rented the herbage and depastured his sheep there; it was *held* that he was rightly convicted under this section for his sheep straying on the highway. *Bothamley v. Danby*, 36 J. P. 135.

(*b*) On a case submitted to the law officers of the Crown by the Home Secretary in December, 1864, they stated it as their opinion that the power of removing to the common pound cattle found on a highway, in contravention of this section, exists: and that it may be exercised by any person lawfully using the highway who finds them; and that the expenses of so removing cattle can be

any) of the parish where the same shall be found, or to Chap. XIII. such other place as may have been provided for the purpose; provided always, that no owner of any such animal shall in any case pay more than the sum of 30s., to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorized keeper of the pound (c): provided also, that nothing in this Act shall be deemed to extend to take away any right of pasturage (d) which may exist on the sides of any highway.

XXVI. Any notice in respect of which no other mode of service is provided by the highway board in pursuance of powers in that behalf conferred on them, and any precept, summons, or order issued by the highway board, may be served,—

As to service of notices issued by highway board.

By delivery of the same personally on the party required to be served; or

By leaving the same at the usual or last known place of abode of such party as aforesaid; or

By forwarding the same by post as a prepaid letter addressed to the usual or last known place of abode of such party.

In proving service of a document by post, it shall be sufficient to prove that the document was properly directed, and that it was put as a prepaid letter into the post office; and in serving notice on the overseers or the waywardens (if more than one) of any parish it shall

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recovered under Jervis' Act—the penalty, under the provisions of that Act, being payable to the treasurer of the county.

(c) See *ante*, p. 61.

(d) See *Golding v. Stocking*, L. R. 4 Q. B. 516, where the owner of a farm adjoining a highway to whom the pasturage on the sides of the highway belonged allowed his cattle to stray over the metalled part of the highway, and it was held that there was evidence justifying a conviction. As to the right of pasturage where land has been inclosed under the General Inclosure Act, see 41 Geo. 3, c. 109, s. 11. *R. v. Edmonton*, 1 M. & R. 24.

**Part II.** be sufficient to serve the same on any one of such officers in a parish.

Schedule  
to Highway  
Act of 1862  
repealed,  
and other  
regulations  
made.

XXVII. [The schedule annexed to the "H. Act of 1862" shall be repealed so far as relates to the proceedings of highway boards, and] (a) the proceedings of highway boards shall, after the passing of this Act, be subject to the regulations contained in the first schedule to this Act annexed.

Amendment  
of section 43  
of Highway  
Act, 1862.

XXVIII. The 43rd section of the "H. Act of 1862" shall be construed as if in the second article thereof the words "not exceeding £5" were omitted (b).

Qualifica-  
tion of  
*ex officio*  
waywardens.

XXIX. A justice of the peace acting for the county in which a highway district is situate, if he is resident in any place which is prohibited either altogether or without the consent of the local authority from being included in a highway district by the 7th section of the "H. Act of 1862," and which is surrounded by or adjoins in any part of such highway district, shall, by virtue of his office, be a member of the highway board of such district, subject to this qualification, that if in pursuance of this section any justice of the peace would be entitled to be a member of two or more highway boards in the same county, he shall, by letter under his hand, addressed to the clerk of the highway board for which he elects to act, and by him to be transmitted to the clerk of the peace of the county, declare of which of the said highway boards he elects to be a member, and having made that election he shall be bound thereby, and shall not be entitled by virtue of his office of justice to be a member of any other of the said boards (c).

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(a) See Statute Law Rev. Act, 1875.

(b) See Statute Law Rev. Act, 1875.

(c) See H. Act, 1862, ss. 7 and 9, *ante*, pp. 190—193.

XXX. The appointment of any officer of a highway board may be made by a minute of the board, signed by the chairman and countersigned by the clerk of the board, and any appointment so made shall be as valid as if it were made under the seal of the board (*d*). Chap. XIII.  
Appoint-  
ment of  
officers of  
board.

XXXI. The power of appointing paid collectors of highway rates with the consent of the inhabitants in vestry assembled, which is vested in a surveyor by the "H. Act, 1835," (*e*) and all the provisions of that Act relating to such appointment, shall be vested in and extend to any waywarden required to levy rates in pursuance of the "H. Act, 1862," and this Act, or either of such Acts; and for the purposes of this Act any meeting (*f*) of ratepayers entitled to elect a waywarden or waywardens shall be deemed to be included under the expression "inhabitants in vestry assembled," as used in this section, and the H. Acts. Power to  
appoint paid  
collectors  
of highway  
rates.

#### *As to Expenses of Board.*

XXXII. [Sections 20, 21, 22, 23, and 24, of the "H. Act, 1862," relating to the expenses of the board, shall be repealed, but such repeal shall not affect any rate made previously to the passing of this Act, or any legal proceeding or remedy for enforcing the same (*g*).] Repeal of  
sections 20,  
21, 22, 23,  
and 24 of  
Highway  
Act, 1862.

The salaries of the officers appointed for each district, and any other expenses incurred by any highway board for the common use or benefit of the several parishes (*h*) within such district, shall be annually charged to a Expenses  
how to be  
charged.

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(*d*) See H. Act, 1862, s. 12, *ante*, p. 199. As to the minute of the board being evidence, see H. Act, 1862, s. 9, sub-sect. 5, *ante*, p. 194.

(*e*) See sect. 36, *ante*, p. 96.

(*f*) See H. Act, 1862, s. 10, *ante*, p. 196.

(*g*) See Statute Law Rev. Act, 1875.

(*h*) See *R. v. Kingsbridge*, 32 J. P. 502.

**Part II.**

district fund (a) to be contributed by and charged upon the several highway parishes within such district in proportion to the rateable value of the property in each parish, but the expenses of maintaining (b) and keeping in repair the highways of each highway parish within the district, and all other expenses legally payable by the highway board in relation to such parish (c), including any sums of money that would have been payable out of the highway rates of such parish if the same had not become part of a highway district, except such expenses as are in this Act authorized to be charged to the district fund, shall be a separate charge on each parish (d).

The rateable value of the property in each parish shall be ascertained according to the valuation list or other estimate for the time being in force in such parish for the purposes of the poor rate, or if no such valuation list or estimate be in force, then in such manner as may be determined by the justices in petty sessions, subject to an appeal (e) by any person aggrieved to the next general or quarter sessions.

Mode of  
defraying  
expenses of  
the highway  
board.

XXXIII. For the purpose of obtaining payment from the several highway parishes within their district of the sums to be contributed by them, the highway board shall order precepts (f) to be issued to the waywardens or overseers of the said parishes according to the provisions hereinafter contained, stating the sum

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(a) Many other expenses are chargeable to this fund, see H. Act, 1878, ss. 7 and 8, *post*, p. 261.

(b) As to disturnpiked roads, &c., being called "main roads," and as to half the expenses of their maintenance being contributed out of the county rate, see H. Act, 1878, ss. 13—20, *post*, pp. 266—271.

(c) See *R. v. Heath*, 12 L. T. (N.S.) 492.

(d) See *R. v. Heath*, 29 J. P. 452; *R. v. Kingsbridge*, 32 J. P. 502.

(e) See sect. 39, *post*, p. 244.

(f) As to the mode of serving such precept, see H. Act, 1864, s. 26, *ante*, p. 235.

to be contributed by each parish, and requiring the officer to whom the precept is addressed, within a time to be limited by the precept, to pay the sum therein mentioned to the treasurer of the board. Chap. XIII.

Where a highway parish is not a parish separately maintaining its own poor, or where in any highway parish it has, for a period of not less than 7 years immediately preceding the passing of the "H. Act, 1862," been the custom of the surveyor of highways for such parish to levy a highway rate in respect of property not subject by law to be assessed to poor rates (*g*), the precept of the highway board shall be addressed to the waywarden of the parish, and in all other cases it shall be addressed to the overseers (*h*).

Where the precept is addressed to a waywarden he shall pay the sum thereby required out of a separate rate, and such separate rate shall, in the case of a parish in which for such period aforesaid it has been the custom of the surveyor of highways to levy a highway rate in respect of property not subject by law to be assessed to poor rate, be assessed on and levied from the persons and in respect of the property on, from, and in respect of which the same has been assessed and levied during such period as aforesaid, and in all other cases such rate shall be assessed on and levied from the persons and in respect of the property (*i*) on, from, and in

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(*g*) That is, such woods, mines, and quarries of stone or other hereditaments as were usually, before the passing of H. Act, 1835, rated to the highways. See 5 & 6 Will. 4, c. 50, s. 27, *ante*, p. 90.

(*h*) In the parish of W. an estate called B. was exempt from highway rate, on the ground that the owner was liable to repair the roads *ratione tenuræ*, but B. was included in the poor rate of the parish of W. An order forming a highway district in 1862 included the parish of W. in the district, and no mention was made of B. as a separate highway parish. The highway board made a precept for a contribution on "the waywarden of the parish of W., B. farm excepted." No waywarden had ever been appointed for B. *Held*, that under this section the precept should have been made on the overseers of the parish of W. *Carter v. Wareham*, 30 J. P. 341.

(*i*) Where the occupiers of certain lands in a hamlet where, pre-



**Part II.** respect of which a poor rate would be assessable and leviable if the parish of which he is waywarden were a place separately maintaining its own poor.

No rate leviable by a waywarden under this Act shall be payable until the same has been published in manner in which rates for the relief of the poor are by law required to be published.

A waywarden shall account to the highway board for the amount of all rates levied by him, and at the expiration of his term of office shall pay any surplus in his hands arising from any rate so levied above the amount for which the rate was made, to the treasurer of the highway board, to the credit of the parish within which such rate was made, and such surplus shall go in reduction of the next highway rate that may be leviable in such parish.

Where the precept is addressed to the overseers they shall pay the sum thereby required out of a poor rate to be levied by them, or out of any monies in their hands applicable to the relief of the poor.

No contribution required to be paid by any parish at any one time in respect of highway rates shall exceed the sum of tenpence in the pound, and the aggregate of contributions required to be paid by any parish in any one year in respect of highway rates shall not exceed the sum of 2s. 6d. in the pound, except with the consent of four-fifths of the ratepayers of the parish in which such excess may be levied present at a meeting specially called for that purpose, of which 10 days previous notice has been given by the waywarden of such

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vions to the passing of the H. Act, 1835, exempt from liability to contribute towards the repair of highways, and the hamlet was, after the passing of the H. Act, 1862, combined with other places into a highway district. *Held*, that the exemption still remained, and that the occupiers of such land were not liable to contribute to so much of a poor rate as was assessed for the repairs of the highways in their hamlet. *R. v. Heath*, 35 L. J. M. C. 113; L. R. 1 Q. B. 218.

parish, and then only to such extent as may be determined by such meeting (a). Chap. XIII.

All sums of money payable in pursuance of the precepts of a highway board shall, whether they are or are not payable by the overseers of the poor, be subject to all charges to which ordinary highway rates are subject by law.

XXXIV. All waywardens and overseers to whom precepts of a highway board are hereby directed or authorized to be issued shall within their respective parishes have the same powers, remedies, and privileges, for and in respect of assessing and levying any rates (b) required to be levied for making payments to a highway board, in the case of overseers, as they have in assessing and levying ordinary rates for the relief of the poor, and in the case of waywardens as they would have if the parish of which they are waywardens were a place separately maintaining its own poor, and they were overseers thereof, and the rate to be levied by them were a duly authorized poor rate (c).

XXXV. If any payment required to be made by the overseers or waywardens of any parish of monies due to a highway board is in arrear, it shall be lawful for any justice, on application under the hand of the chairman for the time being or by the clerk of such board, to summon the said overseers or waywardens to show cause at petty sessions why such payment has not been made; and the justices at such petty sessions, after hearing the complaint preferred on behalf of the board, may,

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(a) See H. Act, 1835, s. 29, *ante*, p. 92.

(b) A paid collector of highway rates may be appointed, H. Act, 1864, s. 31, *ante*, p. 237.

(c) As to the property exempt from highway rate, See H. Act, 1835, s. 33, *ante*, p. 94. See *R. v. Heath*, *ante*, p. 240. As to rating woods, mines, &c., see H. Act, 1835, s. 27, 37 & 38 Vict. c. 54, s. 1, *ante*, p. 90.

**Part II.** they think fit, cause the amount of payment in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said overseers or waywardens, or any of them, in like manner as monies assessed for the relief of the poor may be levied and recovered, and the amount of such arrear, together with the costs aforesaid, when levied and recovered, to be paid to the said board.

*Accounts of Board (a).*

Sects. 25, 26,  
and 30 of  
H. Act, 1862,  
repealed,  
and other  
provisions  
substituted.

XXXVI. The 25th, 26th, and 30th sections of the "H. Act, 1862," shall be repealed, but such repeal shall not affect any proceeding commenced previously to the passing of this Act (b), and instead thereof certain provisions are enacted, which are repealed by H. Act, 1878, s. 9, *post*, p. 262, and others made in lieu thereof.

Within 30 days after the signature (c) of the accounts by the chairman the board shall cause a statement showing the receipt and expenditure in respect of each parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars, and in such form as the secretary of state (d) may direct, to be printed, and sent by post or otherwise to each member of the board, and to the overseers of every parish within the district having overseers; and the clerk of the board shall furnish a copy of such statement to any ratepayer or owner of pro-

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(a) As to the returns to be made of receipts and expenditure as regards highways, see 42 & 43 Vict. c. 39, "The H. Accounts Returns Act, 1879," Part VII.

(b) See Statute Law Rev. Act, 1875.

(c) See now H. Act, 1878, s. 9, *post*, p. 262.

(d) Now Local Government Board; see 35 & 36 Vict. c. 79, s. 36.

perty situate within the district, on his application, Chap. XIII.  
and on the payment of a sum not exceeding one penny. —

The books of account of the board shall at all season-  
able times be open to the inspection of any rate-  
payer of any highway parish within the district of  
the board.

XXXVII. If any person feels aggrieved by any rate levied on him for the purpose of raising monies payable under a precept of a highway board on the ground of incorrectness in the valuation of any property included in such rate, or of any person being put on or left out of such rate, or of the inequality or unfairness of the sum charged on any person or persons therein, he may appeal to the justices in special sessions in manner provided by 6 & 7 Will. 4, c. 96 (e), ss. 6, 7, and all the provisions of the said sections shall be applicable to such appeal. Persons aggrieved by rates levied may appeal in manner provided by 6 & 7 Will. 4, c. 96.

XXXVIII. Where any waywarden of a highway parish of a district, or any ratepayer of such parish, feels aggrieved in respect of the matters following: Power to appeal to quarter sessions against items of expense and expenditure, &c.

- (1.) In respect of any order of the highway board for the repair of any highway in his parish on the ground that such highway is not legally repairable by the parish, or in respect of any other order of the board on the ground that the matter to which such order relates is one in regard to which the board have no jurisdiction to make an order;
- (2.) In respect of any item of expense charged to the separate account of his parish on the ground that such item of expense has not in fact been incurred or has been incurred in respect

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(e) This is the Act to regulate parochial assessments.

**Part II.**

of a matter upon which the board have no authority by law to make any expenditure whatever;

(8.) In respect of any item of expenditure charged to the district fund on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the board has no authority by law to make any expenditure whatever;

(4.) In respect of the contribution required to be made by each parish to the district fund on the ground that such amount, when compared with the contribution of other parishes in the district, is not according to the proportion required by this Act (a);

he may, upon complying with the conditions hereinafter mentioned, appeal to the court of general or quarter sessions having jurisdiction in the district; but no appeal shall be had in respect of any exercise of the discretion of the board in matters within their discretion; and no appeal shall be had except in respect of the matters and upon the grounds hereinbefore mentioned.

Conditions of  
appeal to  
general or  
quarter  
sessions.

XXXIX. No appeal shall be entertained by any court of general or quarter sessions in pursuance of this Act unless the following conditions have been complied with:

(1.) Notice of the intention of appeal must be served by the appellant on the clerk of the highway board in the case of an appeal against an order within 2 months after the order, and in the case of an appeal in respect of any item of expense or contribution within one month after the statement of the account of the

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(a) i. e., in proportion to the rateable value of the property in each parish. H. Act, 1864, s. 32, *ante*, p. 237.

board has been sent to each member of the **Chap. XIII.**  
board as hereinbefore mentioned :

- (2.) The notice must state the matter appealed against, and the ground of the appeal :

On the receipt of the notice the board may serve a counter notice on the appellant, requiring him to appear in person or by his agent at the next meeting of the board and support his appeal. On hearing the appellant the board may rectify the matter complained of, and if they do so to a reasonable extent, and tender to the appellant a reasonable sum for the costs of his attendance, it shall not be lawful for the appellant to proceed with his appeal. In any other case the appellant may proceed with his appeal, and the reasonable costs of his attendance on the board shall be deemed part of the costs of the appeal (b).

**XL.** If at any time after notice of appeal has been given it appears to the court of general or quarter sessions, on the application of either party in the presence of or after notice has been given to the other party, that the matter in question in such appeal consists wholly or in part of matters of mere account which cannot be satisfactorily tried by the court, it shall be lawful for such court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons, to be appointed by the parties, or, in case of disagreement, by the court ; and the award made on such arbitration shall be enforceable by the same process as the order of the court of quarter sessions.

Power to  
refer case to  
arbitration.

**XLI.** The provisions of "The Common Law Procedure Act, 1854," relating to compulsory references, shall be deemed to extend to arbitrations directed by the

Provisions of  
17 & 18 Vict.  
c. 125, incor-  
porated.

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(b) See *ante*, p. 69.

**Part II.** court of quarter sessions; and the word "court" in the said Act shall be deemed to include the court of quarter sessions (a).

Proceedings  
on appeal.

**XLII.** If upon the hearing of the appeal it appears to the court that the question in dispute involves an inquiry as to whether a road is or is not a highway repairable by the public, or an inquiry as to any other important matter of fact, the court may either themselves decide such question, or may impanel a jury of 12 disinterested men out of the persons returned to serve as jurymen at such quarter sessions, and submit to such jury such questions in relation to the matters of fact in dispute as the court think fit; and the verdict of such jury, after hearing the evidence adduced, shall be conclusive as to the questions submitted to them.

The questions so submitted shall be in the form and shall be tried as nearly as may be in the manner in which feigned issues are ordinarily tried, and the court shall decide the parties to be plaintiffs and defendants in such trials.

Subject as aforesaid, the court may, upon the hearing of any appeal under this Act, confirm, reverse, or modify any order of the highway board, or rectify any account appealed against.

Costs of  
appeal.

**XLIII.** If the appellant is successful, the costs shall, unless the court otherwise orders, be paid by the board, and shall be charged to the parishes within the jurisdiction of the board other than the parish to which the appellant belongs in the same proportions in which such parishes contribute to the common fund of the board.

If the appellant is unsuccessful, the board, if the

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(a) As to compulsory references under the C. L. P. Act, 1854, see 2 *Archbold's Practice* by Prentice, p. 1878.

waywarden be the appellant, may charge the costs of the appeal to the parish to which the appellant belongs in the same manner as if they were expenses incurred in repairing the roads in such parish, and may levy the sum accordingly, and may carry the sum so levied to the account of the several parishes within the jurisdiction of the board, other than the parish to which the appellant waywarden belongs, in the same manner as if they were expenses contributed by such parishes to the common fund of the board; but if some ratepayer other than the waywarden is the appellant, the court may order the costs of the appeal to be paid by such appellant; and such costs shall be recoverable in the same manner as a penalty is recovered under "The H. Act, 1862" (b).

XLIV. Places situate in different counties, and places situate partly in one county and partly in another county, when united in one highway district, shall, for all matters connected with the provisions of this Act relating to appeals to quarter sessions against accounts be deemed to be subject to the jurisdiction of the justices of the county in which the district is situate to which such places shall have been united by any provisional and final order or orders, or to which after the passing of this Act any such district shall be declared to be subject by the orders constituting the same, in the same manner as if all such places or parts of places were situate in such county.

Jurisdiction  
as to districts  
in different  
counties.

#### *Supplemental Provisions.*

XLV. If the highway board of a district make default in appointing a treasurer, clerk, and district surveyor, or any of such officers, in pursuance of the

in case of  
default of  
highway board  
appointing  
officers.

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(b) See *ante*, p. 218.



- Part II.** "H. Act, 1862" (a), within \* 3 months after the day fixed by the justices for the holding of the first meeting of the board, or within \* 3 months after a vacancy occurring in any of the said offices, the justices in general or quarter sessions assembled may, if they think fit, appoint a person to any of the said offices in respect of which the default has been made, and may fix the salary to be paid to the officer appointed; and any such appointment shall take effect and salary be recoverable in the same manner as if the officer appointed by the justices had been appointed by the highway board of the district; and it shall not be lawful for such board, without the consent of the said justices, to remove any officer appointed by them under this section, or to lessen his salary within one year from the date of his appointment.
- \* *Qy. for.*

Jurisdiction  
of justices  
in petty  
sessions.

**XLVI.** The justices assembled in petty sessions at their usual place of meeting may exercise any jurisdiction which they are authorized under the H. Acts or any of them to exercise in special sessions; and no justice of the peace shall be disabled from acting as such at any petty or special or general quarter sessions in any matter merely on the ground that he is by virtue of his office a member of any highway board complaining, interested, or concerned in such matter, or has acted as such at any meeting of such board (b).

Power of  
highway  
board to make  
improvements  
and borrow  
money for the

**XLVII.** A highway board may make such improvements as are hereinafter mentioned in the highways within their jurisdiction, and may, with the approval of the justices in general or quarter sessions assembled,

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(a) See sect. 12 of this Act, *ante*, p. 199.

(b) *Ante* p. 212. A justice who is a party to a proceeding before the sessions cannot act as a justice at the sessions with reference to such proceeding. *R. v. Cumberland*, 42 J. P. 361.

borrow money for the purpose of defraying the ex- Chap. XIII.  
penses of such improvements (c) :

Previously to applying for the approval of the jus- same, but  
previously to  
cause an  
estimate to  
be made.  
tices, the highway board shall cause an estimate of the  
expense of the improvements to be made, and 2  
months at the least before making their application  
shall give notice of their intention so to do.

The notice shall state the following particulars :

- (1.) The nature of the work, the estimated amount of expense to be incurred, and the sum proposed to be borrowed :
- (2.) The parish or parishes within the district by which the sum borrowed and the interest thereon is to be paid, and in case of more parishes than one being made liable to pay the principal and interest the annual amounts to be contributed by each parish towards the payment thereof :
- (3.) The number of years within which the principal monies borrowed are to be paid off, not exceeding 20 years, and the amount to be set apart in each year for paying off the same :
- (4.) The sessions at which the application is to be made.

Notice shall be given as follows :

- (1.) By transmitting a copy to the clerk of the peace for the county or division :
- (2.) By placing a copy of such notice for 3 successive Sundays on the church door of every church of the parish or parishes on behalf of which such works are to be done, or, in the case of any place not having a church, in some conspicuous position in such place.

Upon the hearing of the application any person or persons may oppose the approval of the justices being

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(c) As to the abolition of tolls on a turnpike road being an improvement within this section see 35 & 36 Vict. c. 85, s. 15 ; 36 & 37 Vict. c. 90, s. 16, *post*, Part V.

**Part II.** given, and it shall be lawful for the justices to give or withhold their approval, with or without modification, as they think just.

All monies borrowed in pursuance of this Act, together with the interest thereon, shall be a first charge on the highway rates of each (a) parish liable to contribute to the payment thereof, after paying the sums due to the highway board on account of the district fund, in the same manner, so far as the creditor is concerned, as if the money had been borrowed on account of each parish alone; and the sums necessary to repay the said borrowed monies, with interest, shall in each such parish be recoverable in the same manner as if they were expenses incurred by the board in keeping in repair the highways of that parish.

But it shall be the duty of the highway board, in case of any one parish paying more than its share of such borrowed money, or of the interest thereon, to make good to that parish the excess so paid out of the rates of the other parishes liable to contribute thereto.

The justices may from time to time make general orders in relation to the mode in which the applications are to be made to them for their consent under this Act to the borrowing of any monies.

Definition of  
improvements.

XLVIII. The following works shall be deemed to be improvements of highways :

- (1.) The conversion of any road that has not been stoned into a stoned road :
- (2.) The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges :
- (3.) The doing of any other work in respect of highways beyond ordinary repairs essential to

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(a) See now H. Act, 1878, s. 8, *post*, p. 261.

placing any existing highway in a proper state of repair. Chap. XIII.

**XLIX.** Any parish may, with the consent of its waywarden, contribute to any improvements made in another parish, whether situate or not in the same district, if such first-mentioned parish consider such improvements to be for its benefit; and any highway board may contribute to any improvements made in another district if such improvements are, in the opinion of the highway board of the first-mentioned district, for the benefit of their district. The contribution to be made by one parish to another shall be payable in the same manner as if such contributions were monies due from the contributing parish in respect of expenses incurred in keeping in repair the highways of that parish, and monies contributed by one district to another district shall be payable out of the common fund of the contributing district.

Power for  
parishes and  
districts to  
contribute to  
improvements.

**L.** The clauses of "The Commissioners Clauses Act, 1847," with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

Certain  
clauses of  
10 & 11 Vict.  
c. 10, incor-  
porated.

In the construction of the said clauses, "the commissioners" shall mean "the highway board."

Mortgages and transfers of mortgages shall be valid if made in the forms prescribed by the last-mentioned Act, or in the forms appearing in the second schedule annexed to this Act, or as near thereto as circumstances admit.

**LI.** From and after the passing of this Act if any person shall encroach (b) by making or causing to be

As to  
encroach-

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(b) The owner of land and of a ditch on the side of a highway built a fence on the ditch within 7 feet of the centre of the high-

**Part II.** made any building or pit, or hedge, ditch, or other  
 fence, or by placing any dung, compost or other  
 materials for dressing land, or any rubbish, on the side  
 or sides (b) of any carriageway or cartway within  
 15 feet of the centre thereof, or by removing any soil  
 or turf from the side or sides of any carriageway or  
 cartway, except for the purpose of improving the road,  
 and by order of the highway board, or, where there is  
 no highway board, of the surveyor, he shall be subject  
 on conviction for every such offence to any sum not  
 exceeding 40s., notwithstanding that the whole space  
 of 15 feet from the centre of such carriageway or cart-  
 way has not been maintained with stones or other  
 materials used in forming highways; and it shall be  
 lawful for the justices assembled at petty sessions, upon  
 proof to them made upon oath, to levy the expenses of  
 taking down such building, hedge, or fence, or filling  
 up such ditch or pit, and removing such dung, compost,  
 materials, or rubbish as aforesaid, or restoring the  
 injury caused by the removal of such soil or turf, upon

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way; it was held that the owner could not be convicted under this section for encroaching on the highway, as the ditch was no part of the highway. *Thorne v. Field*, 33 J. P. 727.

Proceedings for an encroachment by erecting a fence must be taken within 6 months from the committing of the act complained of—the encroachment is not a continuing offence. *Ranking v. Forbes*, 34 J. P. 486; *Coggins v. Bennett*, L. R. 2, C. P. D. 568.

(a) Compare with this section the 69th of H. Act, 1835, *ante*, p. 122. In some respects they are identical, but certain new offences are created by the recent statute, particularly those of placing dung, compost, &c., upon, and removing soil and turf from the sides of the road. There is also a provision specially intended to meet the cases of *Evans v. Oakley*, 1 C. & K. 125, and *Chapman v. Robinson*, 28 E. J. M. C. 30, mentioned in the note to H. Act, 1835, sect. 69. The provision for “restoring the injury caused by the removal of turf” is one which it will not be very easy to carry out in practice. As to soil, rubbish, &c., laid on a highway so as to be a nuisance, see H. Act, 1835, s. 73, *ante*, p. 127.

(b) The sides of any carriageway or cartway in this section mean any land forming part of the highway, but do not extend to land by the side of the road which is not part of the highway. *Easton v. Richmond Highway Board*, L. R. 7 Q. B. 69; 41 L. J. M. C. 25.

the person offending: Provided always, that where any Chap. XIII. carriageway or cartway is fenced on both sides no encroachment as aforesaid shall be allowed whereby such carriageway or cartway shall be reduced in width to less than 30 feet between the fences on each side.

LII. The highway board may and is hereby authorized to contract for purchasing, getting, and carrying the materials required for the repair of the highways, and for maintaining and keeping in repair all or any part of the highways of any parish within their highway district, for any period not exceeding 3 years (c). Power to contract for materials for repairing highways.

LIII. A highway board, for the purpose of improving the highways within their district, may purchase such lands or easements relating to lands as they may require (d); and "The Lands Clauses Consolidation Act, 1845," and the Act amending the same 23 & 24 Vict. c. 106, shall be incorporated with this Act, with the exception of the clauses relating to the purchase of land otherwise than by agreement. Board may purchase land. 8 & 9 Vict. c. 18, and 23 & 24 Vict. c. 106, incorporated.

In the construction of this Act and the said incorporated Acts this Act shall be deemed to be the special Act, and the board shall be deemed to be the promoters of the undertaking, and the word "land" or "lands" shall include any easement in or out of lands.

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(c) See sect. 22, *ante*, p. 232.

(d) See H. Act, 1862, s. 9, *ante*, p. 193.

## Part II.

## FIRST SCHEDULE.

*Proceedings of Highway Boards.*

- (1.) The board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place (a), management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions :
  - (a.) The first meeting (b) after the formation of the district shall be held at the time and place fixed by the order of the justice\* in that behalf ;
  - (b.) One ordinary meeting shall be held in each period of 4 months, and of such meetings one shall be held on some day between the 7th and 14th days of April ;
  - (c.) An extraordinary meeting may be summoned at any time, on the requisition of 3 members of the board, addressed to the clerk of the board ;
  - (d.) The quorum to be fixed by the board shall consist of not less than 3 members ;
  - (e.) Every question shall be decided by a majority of votes of the members voting on that question ;
  - (f.) The names of the members present at a meeting shall be recorded.
- (2.) The board shall at the first meeting, and afterwards from time to time at their first meeting after each annual appointment of members of the board as hereafter mentioned, appoint one of their members to be chairman and one other of their members to be a vice-chairman for the year following such choice.
- (3.) If any casual vacancy occur in the office of chairman or vice-chairman, the board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some member of their number to fill such vacancy ; and every such chairman or vice-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.
- (4.) If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting ; and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be a chairman of such meeting.
- (5.) In case of an equality of votes at any meeting the chairman for the time being of such meeting shall have a second or casting vote.

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(a) See 26 & 27 Vict. c. 17, s. 6.

(b) See H. Act, 1864, s. 10, *ante*, p. 226.

- (6.) All orders of the board for payment of money, and all precepts issued by the board, shall be deemed to be duly executed if signed by 2 or more members of the board authorized to sign them by a resolution of the board, and countersigned by the clerk; but it shall not be necessary in any legal proceeding to prove that the members signing any such order or precept were authorized to sign them, and such authority shall be presumed until the contrary is proved.

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## SECOND SCHEDULE.

### FORMS.

#### *Form of Mortgage.*

The highway board of the \_\_\_\_\_ district, in consideration of \_\_\_\_\_ pounds paid to the treasurer of the said board by A. B. \_\_\_\_\_ of \_\_\_\_\_ assigns unto the said A. B., his executors, administrators, and assigns, such proportion of the highway rates leviable in the highway parish or parishes of [name the parishes] as the said sum of \_\_\_\_\_ pounds bears to the whole sum borrowed on the credit of the said rates, to hold to the said A. B., his executors, administrators, and assigns, until the said sum of \_\_\_\_\_ pounds, with interest at the rate of \_\_\_\_\_ pounds per centum per annum, is paid.

The interest on this mortgage will be paid at \_\_\_\_\_ day and \_\_\_\_\_ days of \_\_\_\_\_ in every year. on the \_\_\_\_\_ day of \_\_\_\_\_

The principal will be paid at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

Given under our corporate seal this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Note.—The mortgage must be under the corporate seal of the board, and duly stamped. See *Commissioners Highway Act, 10 Vict. c. 16, s. 75.*

#### *Transfer of Mortgage by Indorsement.*

The within-named A. B., in consideration of the sum of \_\_\_\_\_ pounds paid to him by C. D. of \_\_\_\_\_, hereby transfers to the said C. D., his executors, administrators, and assigns, all his interest in the monies secured by the within-written mortgage and in the within-named rates.

In witness whereof the said A. B. has hereunto set his hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Note.—The transfer must be under seal and duly stamped. See *section 77 of Commissioners Clauses Act, 10 Vict. c. 16.*

Note.—See *section 50 of Act.*

Note.—*Highway rate in-cludes poor rate, when the high-ways are maintained out of poor rate. See sect. 33 of Act.*

Note.—*Highway parish means every parish that separately returns a waywarden or waywardens to the highway board. See sect. 3 of Act.*



**Part II.**

**CHAPTER XIV.**

**HIGHWAYS AND LOCOMOTIVES  
(AMENDMENT) ACT, 1878.**

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41 & 42 VICT. CAP. 77.

*An Act to amend the Law relating to Highways in England and the Acts relating to Locomotives on Roads ; and for other purposes.*

[16th August, 1878.]

WHEREAS it is expedient to amend the law relating to highways in England, and to amend the Locomotive Acts, 1861 and 1865 :

Be it enacted, &c., as follows :

*Preliminary.*

Short title.      I. This Act may be cited as the Highways and Locomotives (Amendment) Act, 1878 (a).

Application of Act.      II. This Act shall not apply to Scotland or Ireland (b) ; and, save as is by this Act expressly provided (c), Part I. of this Act shall not apply to the Isle of Wight ; nor to any part of the metropolis ; nor to any part of a county to which the Act 23 & 24 Vict. c. 68, intituled "An Act for the better management and control of the highways in South Wales," extends.

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(a) For the sake of brevity this Act is often referred to in this work as the H. Act, 1878.

(b) See H. Act, 1862, s. 1, *ante*, p. 185.

(c) See sect. 27, *post*, p. 279.

## PART I.

## Chap. XIV.

## AMENDMENT OF HIGHWAY LAW.

*Highway Districts.*

III. In forming any highway districts, or in altering the boundaries of any highway districts, the county authority (*d*) shall have regard to the boundaries of the rural sanitary districts (*e*) in their county, and shall, so far as may be found practicable, form highway districts so as to be co-incident in area with rural sanitary districts, or wholly contained within rural sanitary districts.

IV. Where a highway district, whether formed before or after the passing of this Act, is or becomes co-incident in area with a rural sanitary district (*e*), the rural sanitary authority (*f*) of such district may apply to the county authority, stating that they are desirous to exercise the powers of a highway board under the H. Acts (*g*) within their district.

On such application the county authority may, if they see fit, by order declare that from and after a day to be named in the order (in this Act called the commencement of the order) such rural sanitary authority shall exercise all the powers of a highway board under the H. Acts (*g*); and as from the commencement of the order the existing highway board (if any) for the district shall be dissolved, and waywardens or surveyors shall not hold office or be elected for any parish in the district.

An order made under this section may be amended,

(*d*) As to meaning of county authority, see sect. 38, *post*, p. 286.

(*e*) As to meaning of rural sanitary districts, see sect. 38, *post*, p. 286.

(*f*) As to the meaning of this term, see sect. 38, *post*, p. 286.

(*g*) What Acts are included under the short title of "The H. Acts," see H. Act, 1864, s. 1, *ante*, p. 221.

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altered, or rescinded by a subsequent order of the county authority.

Where a highway district, being co-incident in area with a rural sanitary district, is situate in more than one county, an order under this section may be made by the county authority of any county in which any part of such district is situate, but such order, and any order amending, altering, or rescinding the same, shall not be of any force or effect until it has been approved by the county authority or authorities of the other county or counties in which any part of such district is situate.

Consequences  
of rural  
sanitary  
authority  
becoming  
highway  
board.

V. (1.) From and after the commencement of the order declaring a rural sanitary authority entitled to exercise the powers of a highway board within their district, the following consequences shall ensue :

All such property, real or personal, including all interests easements and rights in to and out of property real and personal and including things in action, as belongs to or is vested in or would but for such order have belonged to or been vested in the highway board, or any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the rural sanitary authority for all the estate and interest of the highway board, or of such surveyor or surveyors, but subject to all debts and liabilities affecting the same :

All debts and liabilities incurred in respect of any property transferred to the rural sanitary authority may be enforced against that authority to the extent of the property transferred :

All such powers, rights, duties, liabilities, capacities, and incapacities (except the power of obtaining payment of their expenses by the issue of precepts in manner provided by the H. Acts (a), or the

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(a) Sec H. Act, 1864, s. 33, *ante*, p. 238.

power of making, assessing, and levying highway rates) as are vested in or attached to or would but for such order have become vested in or attached to the highway board, or any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the rural sanitary authority :

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All property by this Act transferred to the rural sanitary authority shall be held by them on trust for the several parishes for the benefit of which it was held previously to such transfer.

(2.) If at any time after a rural sanitary authority has become invested with the powers of a highway board in pursuance of this Act, the boundaries of the district of such authority are altered, the powers and jurisdiction of such authority in their capacity of highway board shall be exercised within such altered district ; and on the application of any authority or person interested the Local Government Board may by order provide for the adjustment of any accounts, or the settlement of any doubt or difference so far as relates to highways consequent on the alteration of the boundaries of such rural sanitary district.

(3.) All expenses incurred by a rural sanitary authority in the performance of their duties as a highway board shall be deemed to be general expenses of such authority within the meaning of the Public Health Act, 1875 (b).

The president of the Local Government Board, in a letter dated 5th October, 1878, and addressed to the clerks to rural sanitary authorities, makes the following observations with reference to the above sects. 3—5.

The intention of the legislature in making these provisions has evidently been to guard against the confusion occasioned by the further overlapping of highway districts with rural

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(b) 38 & 39 Vict. c. 55 ; see sects. 229, 230, and 231. This is in harmony with sect. 7 of the above Act noticed, *post*, p. 261.

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sanitary areas, and to facilitate the transfer to the rural sanitary authorities of the management of the highways within their respective districts, where circumstances point to such an arrangement as tending to economical and efficient administration.

At the present time the duty devolves upon the rural sanitary authorities of providing works of sewerage and water supply for the areas under their jurisdiction ; and as these works necessitate frequent and serious interference with the public roads, it is obviously desirable, looking at the advantages experienced in urban districts from having all matters affecting the roads under the direction of one body, that there should be means readily available for placing the highways in rural districts also under the control and management of the sanitary authority.

In corroboration of this view, reference may be made to the report of the select committee appointed by the House of Commons during the last session to inquire into the system under which guardians of the poor and members of local boards are elected, in which the committee recommend that wherever practicable the powers of highway boards in rural sanitary districts shall be transferred to the rural sanitary authority.

In those counties where highway districts have already been formed there are doubtless instances in which some of the districts are coincident with the areas under the jurisdiction of the rural sanitary authorities ; and in those cases it will be for the rural sanitary authorities to consider whether they should not apply to the county authority for an order authorising them to exercise the powers of a highway board, so that the roads may be entirely under their jurisdiction.

In those counties, however, where the district system has not yet been carried into effect, the facilities for accomplishing this object will be much greater, and the president cannot but suppose that any expression of a desire on the part of the rural sanitary authority to be invested with the management of the roads within their respective districts would have much influence with the county authority in determining the course to be adopted by them with respect to the formation of new districts under the Act.

It remains to be added, that the provisions of the Act to which the attention of the rural sanitary authority has been directed do not extend to the Isle of Wight or to South Wales.

VI. Any two or more highway boards may unite in appointing and paying the salary of a district surveyor, who shall in relation to the district of each of the boards by whom he is appointed have all the powers and duties of a district surveyor under the H. Acts (a).

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H. boards may combine to appoint a district surveyor.

VII. All expenses incurred by any highway board in maintaining and keeping in repair the highways of each parish within their district, and all other expenses legally incurred by such board, shall, notwithstanding anything contained in the H. Acts (a), on and after the 25th day of March, 1879, be deemed to have been incurred for the common use or benefit of the several parishes within their district, and shall be charged on the district fund (b): Provided, that if a highway board think it just, by reason of natural differences of soil or locality, or other exceptional circumstances, that any parish or parishes within their district should bear the expenses of maintaining its or their own highways, they may (with the approval of the county authority (c) or authorities of the county or counties within which their district, or any part thereof, is situate) divide their district into two or more parts, and charge exclusively on each of such parts the expenses payable by such highway board in respect of maintaining and keeping in repair the highways situate in each such part; so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes.

Expenses of highway boards to be paid out of district fund.

VIII. All monies borrowed by a highway board after the 25th day of March, 1879, under the H. Acts,

Charge of monies to be hereafter borrowed.

(a) What are these Acts? see H. Act, 1864, s. 1, *ante*, p. 221; see H. Act, 1835, s. 16, *ante*, p. 81.

(b) On what parishes these expenses were charged before this Act, see H. Act, 1864, s. 32, *ante*, p. 237. As to the cost of the relief of the poor being charged upon the common fund of the union, see 28 & 29 Vict. c. 79.

(c) As to the meaning of this term, see sect. 38, *post*, p. 286.

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shall be charged on the district fund, but nothing in this Act shall affect the security, chargeability, or repayment of any monies borrowed before the 25th day of March, 1879 (a).

Audit of  
accounts of  
highway dis-  
tricts and  
parishes.

IX. The accounts of the highway authority of every highway district and highway parish shall be made up in such form as the Local Government Board shall from time to time prescribe, and shall be balanced to the 25th day of March (b) in each year, and as soon as conveniently may be after such day the said accounts shall be audited (c) and examined by the auditor of accounts relating to the relief of the poor for the audit district in which the highway district or highway parish, or the greater part thereof in rateable value, is situate. [See Part X.]

(a) See H. Act, 1864, s. 47, *ante*, p. 248.

(b) As to forms of accounts, &c., see Part X. Before this Act accounts were made up to 31st December in each year; H. Act, 1864, s. 36, *ante*, p. 242.

(c) As to audit before this Act, see H. Act, 1835, s. 45, *ante*, p. 109. As to audit of the accounts of a rural sanitary authority, see 38 & 39 Vict. c. 55, s. 248.

The following is an extract from a letter from the Local Government Board to the surveyors of highways:—

“The remuneration received by the auditor will be such as the Local Government Board direct, and will be paid, together with the expenses incident to the audit, by the surveyor, out of the fund applicable to the repair of the highways of the parish. I should be added that the accounts of the surveyor must hereafter be made up in a form to be prescribed by the Local Government Board, and the Board will, as early as practicable, issue an order prescribing such form.

“It will be obligatory on the surveyor to keep in such form as may be directed by the county authority a separate account of the expenses of the maintenance of the main roads within his parish; and to forward copies of such account to the county authority at such time or times in the year as may be required by them; and the accounts so kept must be audited in the same manner as the other accounts of the surveyor.

“Special attention should be paid to the requirements of the Act relating to these separate accounts; for if default is made in complying with them or with any directions given in pursuance of them by the county authority, that authority may withhold all or any part of the contribution payable by them, under the Act, towards the maintenance of main roads by the surveyor for the year in which such default occurs.” See sect. 18, *post*, p. 269.

Every such auditor shall (as nearly as may be) have, Chap. XIV.  
in relation to the accounts of the highway authority of  
a highway district or highway parish, and of their  
officers, the same powers and duties as he has in the  
case of accounts relating to the relief of the poor; and  
any person aggrieved by the decision of the auditor  
shall have the same rights and remedies as in the case  
of such last-mentioned audit (d).

The auditor shall receive such remuneration as the  
Local Government Board direct; and such remunera-  
tion, together with the expenses incident to the audit,  
shall be paid by the highway authority of the highway  
district or highway parish out of the fund or rate  
applicable to the repair of highways within such district  
or parish; and such remuneration and expenses may,  
in default of payment, be recovered in a summary (e)  
manner.

Sect. 44 of the H. Act, 1835, is hereby repealed, and  
sect. 36 of the H. Act, 1864, is hereby repealed down  
to the words "to be paid out of the district fund," and  
the statement of receipt and expenditure by the said  
section directed to be furnished by every highway board  
within 30 days after the signature of the accounts by  
the chairman shall be furnished within 30 days after  
the completion of the audit under this section.

Nothing in this section shall affect any proceeding  
commenced before the passing of this Act.

X. Where complaint is made to the county autho-  
rity (f) that the highway authority (f) of any highway  
area within their jurisdiction has made default in main-  
taining or repairing all or any of the highways within  
their jurisdiction, the county authority, if satisfied after  
Power of  
county autho-  
rity to enforce  
performance  
of duty by  
defaulting  
highway  
authority (g).

(d) See 7 & 8 Vict. c. 101, ss. 32—36.

(e) See sect. 36, *post*, p. 284.

(f) See meaning of this term, sect. 38, *post*, p. 286.

(g) This section, it would seem, is cumulative, and does not  
impliedly repeal the H. Act, 1835, s. 94, *ante*, p. 149, and H. Act,  
1864, s. 18, *ante*, p. 230.



**Part II.**  
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due inquiry and report by their surveyor that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of the duty of the highway authority in the matter of such complaint (a).

If such duty is not performed by the time limited in the order, and the highway authority fail to show to the county authority sufficient cause why the order has not been complied with, the county authority may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with the reasonable remuneration of the person appointed for superintending such performance, shall be paid by the authority in default, and any order made for payment of such expenses and costs may be removed (b) into the High Court of Justice, and be enforced in the same manner as if the same were an order of such court.

Any person appointed under this section to perform the duty of a defaulting highway authority shall, in the performance and for the purpose of such duty, be invested with all the powers of such authority other than the powers of making rates or levying contributions by precept, and the county authority may from time to time, by order, change any person so appointed.

Where an order has been made by a county authority for the repair of a highway on a highway authority alleged to be in default, if such authority, within 10 days after service on them of the order of the county authority, give notice to the clerk of the peace that they decline to comply with the requisitions of such order until their liability (c) to repair the highway in

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(a) It is submitted that the highway authority should be summoned to answer the complaint, and heard, if it appear, before an order is made; see, before this Act, H. Act, 1835, ss. 94, 95: H. Act, 1862, ss. 18, 19.

(b) See 12 & 13 Vict. c. 45, s. 18; 36 & 37 Vict. c. 66, s. 16, 34.

(c) See *R. v. Farrer*, L. R. Q. B. 558, decided before this Act.

respect to which they are alleged to have made default has been determined by a jury, it shall be the duty of the county authority either to satisfy the defaulting authority by cancelling or modifying in such manner as the authority may desire the order of the county authority, or else to submit to a jury the question of the liability of the defaulting authority to repair the highway. Chap. XIV

If the county authority decide to submit the question to a jury they shall direct a bill of indictment to be preferred to the next practicable assizes to be holden in and for their county, with a view to try the liability of the defaulting authority to repair the highway. Until the trial of the indictment is concluded the order of the county authority shall be suspended. On the conclusion of the trial, if the jury find the defendants guilty, the order of the county authority shall forthwith be deemed to come into force; but if the jury acquit the defendants the order of the county authority shall forthwith become void.

The costs of the indictment, and of the proceedings consequent thereon, shall be paid by such parties to the proceedings as the court before whom the case is tried may direct (*d*). Any costs directed to be paid by the county authority shall be deemed to be expenses properly incurred by such authority, and shall be paid accordingly out of the county rate; and any costs directed to be paid by the highway authority shall be deemed to be expenses properly incurred by such authority in maintenance of the roads within their jurisdiction, and shall be paid out of the funds (*e*) applicable to the maintenance of such roads.

XI. Notwithstanding anything in the H. Acts, way-wardens shall continue in office till the 30th day of Duration of office of way-warden.

(*d*) See former enactments, H. Act, 1835, s. 95, *ante*, p. 152; H. Act, 1862, s. 19, *ante*, p. 204.

(*e*) See sect. 7, *ante*, p. 261.

**Part II.** April in the year following the year in which they were elected, and on that day their successors shall come into office (a).

Repeal of  
part of sect. 7  
of 25 & 26  
Vict. c. 61.

XII. So much of sect. 7 of the H. Act, 1862, as prohibits the inclusion in a highway district of any parish or place the highways of which were, at the time of the passing of that Act, or within six months afterwards, under the superintendence of a board established in pursuance of section 18 of the principal Act, unless with the consent of such board, is hereby repealed.

### *Main Roads.*

Disturnpiked  
roads to  
become main  
roads, and  
half the ex-  
pense of main-  
tenance to be  
contributed  
out of county  
rate (c).

XIII. For the purposes of this Act, and subject to its provisions, any road which has, within the period between the 31st day of December, 1870, and the date of the passing of this Act, ceased to be a turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such (b), shall be deemed to be a main road; and one-half of the expenses incurred from and after the 29th day of September, 1878, by the highway authority (d) in the maintenance of such road shall, as to every part thereof which is within the limits of any highway area (e), be paid to the highway authority of such area by the county authority (f) of the county in which such road is situate out of the county rate, on the certificate of the surveyor of the county authority, or of

(a) See H. Act, 1862, s. 10, *ante*, p. 196; H. Act, 1864, s. 11, *ante*, p. 226.

(b) Where portions of roads had only ceased to form parts of turnpike trusts incidentally by being merged in another jurisdiction with an express provision as to their repair, it was held that the roads were not main roads within the meaning of the statute. *Mayor, &c., of Rochdale v. JJ. of Lancashire*, 50 L. J. M. C. 97.

(c) See 33 & 34 Vict. c. 73, s. 10, noticed Part V.

(d) See sect. 38, *post*, p. 286.

(e) See sect. 14, *post*, p. 267.

(f) As to meaning of county authority, see sect. 38, *post*, p. 286.

such other person or persons as the county authority **Chap. XIV.**  
may appoint, to the effect that such main road has been  
maintained to his or their satisfaction.

Provided that no part of such expenses shall be included in—

- (1.) Any precept or warrant for the levying or collection of county rate within the metropolis, subject and without prejudice to any provision to be hereafter made; or
- (2.) Any order made on the council of any borough having a separate court of quarter sessions under sect. 117 of the Municipal Corporation Act, 1835.

The term “expenses” in this section shall mean the cost of repairs defrayed out of current rates, and shall not include any repayment of principal moneys borrowed, or of interest payable thereon.

XIV. The following areas shall be deemed to be **Description of highway areas.**  
highway areas for the purposes of this Act; (that is to say,)

- (1.) Urban sanitary districts (g) :
- (2.) Highway districts :
- (3.) Highway parishes not included within any highway district or any urban sanitary district.

XV. Where it appears to any highway authority (g) **Power to declare ordinary highway to be a main road (h).**  
that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority for an order declar-

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(g) See sect. 38, *post*, p. 286.

(h) Although not so expressly stated, it is evidently intended that the county shall contribute, as mentioned in sect. 13, *ante*, p. 286, one-half of the expenses incurred by the highway authority in the maintenance of all roads declared to be “main roads.”

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ing such road, as to such parts as aforesaid, to be a main road; and the county authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and, if satisfied that it ought to be a main road, shall make an order accordingly.

A copy of the order so made shall be forthwith deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority made within a period of not more than six months after the making of the first-mentioned order.

Power to  
reduce main  
road to  
status of  
ordinary  
highway.

XVI. If it appears to a county authority (a) that any road within their county which, within the period between the 31st day of December, 1870, and the date of the passing of this Act, ceased to be a turnpike road ought not to become a main road in pursuance of this Act, such authority shall, before the first day of February, 1879, make an application to the Local Government Board for a provisional order declaring that such road ought not to become a main road.

Subject as aforesaid, where it appears to a county authority (a) that any road within their county which has become a main road in pursuance of this Act ought to cease to be a main road and become an ordinary highway, such authority may apply to the Loc. Gov. Board for a provisional order declaring that such road has ceased to be a main road and become an ordinary highway.

The Local Gov. Board, if of opinion that there is probable cause for an application under this section, shall cause the road to be inspected, and if satisfied that it ought not to become or ought to cease to be a

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(a) See sect. 38, *post*, p. 286.

main road and become an ordinary highway shall make a provisional order accordingly, to be confirmed as hereinafter mentioned (see sect. 34, *post*, p. 284). Chap. XIV.

All expenses incurred in or incidental to the making or confirmation of any order under this section shall be defrayed by the county authority applying for such order.

XVII. Where a turnpike road subject to one trust extends into divers counties, such road, for the purposes of this Act, shall be treated as a separate turnpike road in each county through which it passes. Turnpike road in several counties.

XVIII. Every highway authority (*b*) shall keep, in such form as may be directed by the county authority, a separate account of the expenses of the maintenance of the main (*c*) roads within their jurisdiction, and Accounts of expenses of maintenance of main roads.

(*b*) See sect. 38, *post*, p. 286.

(*c*) As to other accounts to be kept, see sect. 9, *ante*, p. 262. See Part X.

The following is an extract from a letter from the Local Government Board dated 18th September, 1878, referring to this section.

The highway authorities are required to keep an account of the expenditure in respect of which repayment is to be made in such form as the justices may direct, and forward the same at such time or times in every year as the justices may require. It is desirable, therefore, that the justices should, as early as practicable, prescribe a form of account, and send the same to the highway authorities within their jurisdiction.

These accounts before they are transmitted to the county authority must be duly audited. In the case of all highway authorities, with the exception of the councils of municipal boroughs not having a separate Court of Quarter Sessions, the accounts will be audited in the same manner as the other accounts of those authorities, or in other words by the district auditor of the Local Government Board, but as regards the boroughs lastly referred to, in which the accounts of the town council as the sanitary authority are audited by auditors appointed under the Municipal Corporations Act, the accounts to be sent in to the county authority are to be subject to such audit as they may direct.

If any highway authority fail as regards these accounts to comply with the requirements of the Act, or the directions of the justices made in pursuance thereof, the justices may withhold all or any part of the contribution payable from the county rate.

The Act does not prescribe in express terms how often or at

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shall forward copies thereof to the county authority at such time or times in every year as may be required by the county authority, and the accounts so kept shall, where the accounts of the highway authority are audited under this Act (a) or under section 247 (b) of the Public Health Act, 1875, be audited in the same manner as the other accounts of such authority, and where the accounts of the highway authority are not so audited shall be subject to such audit as the county authority may direct.

If any highway authority makes default in complying with the provisions of this section, or with any directions given in pursuance thereof by the county authority, the county authority may withhold all or any part of the contribution payable by them under this Act towards the expenses of the maintenance of main roads by such highway authority for the year in which such default occurs.

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what periods the repayments should be made, but it seems evident from sect. 18 that the legislature contemplated that they should be made yearly.

With regard to the date at which the year should terminate it will be seen that in future the general accounts of the highway authorities of all highway districts and highway parishes are to be made up and balanced to the 25th of March in each year for the purpose of audit, and the most convenient arrangement will doubtless be that the accounts to be transmitted to the county authority should cover the same period, and the repayments be made accordingly. This arrangement will, however, necessitate that the first accounts and repayments should be in respect of half a year only, terminating on the 25th of March next.

Before any repayment can be made to a highway authority it is necessary that the justices should be furnished with a certificate from their surveyor, or some other person appointed by them in that behalf, that the road in respect of which the repayment is claimed has been maintained to his satisfaction.

It is important also to bear in mind that the repayment will be limited to the cost of repairs defrayed out of current rates, and cannot be allowed to include any instalments of loans or interest payable thereon.

(a) Sect. 9, *ante*, p. 262.

(b) This section applies where urban authority is not a town council. The audit of accounts of a rural sanitary authority is regulated by sect. 248 of the Public Health Act, 1875.

**XIX.** Where a highway district is situate in more than one county, the provisions of this Act, with respect to the expenses of the maintenance of main roads, shall apply as if the portion of such district situate in each county were a separate highway district in that county. **Chap. XIV.**  
Highway district situate in more than one county.

**XX.** Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any main road or part of a main road within their county to be repairable to the extent only and in manner provided by section 13 of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit: and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged. Repair of main roads in certain cases.

The following is an extract from a letter dated 18th Sept., 1878, from the Local Government Board with reference to this section.

The wording of this section, which was introduced at a very late stage of the bill, and is limited in its application to the county of Lancaster chiefly, is somewhat obscure; but it may be assumed that the effect of declaring a main road repairable by the hundred is simply intended to be that the hundred rate shall be substituted for the county rate as the fund from which a moiety of the cost is to be repaid to the highway authorities.

The justices, however, will not fail to observe that where the alternative given by the section is adopted, it is desirable



**Part II.**  

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that all the main roads in the county should be declared to be repairable by the several hundreds through which they pass, otherwise the ratepayers of those hundreds will not only have to contribute towards the roads within their own hundreds, but also towards any roads within the county in respect of which a contribution is payable from the county rate.

*Bridges (a).*

Certain  
existing  
bridges may  
be accepted  
by county  
authority.

XXI. Any bridge erected before the passing of this Act in any county without such superintendence as is provided in sect. 5 of 43 Geo. 3, c. 59, and which is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair.

Contri-  
bution out  
of county  
rates  
towards  
erecting  
bridges.

XXII. The county authority may make such contribution as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected, after the same has been certified in accordance with the provisions of sect. 5 of 43 Geo. 3, c. 59, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one half the cost of erecting such bridge.

As to the power to borrow money in order to make contri-

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(a) By 33 & 34 Vict. c. 73. The Annual Turnpike Acts Continuance Act, 1870, s. 12, "Where a turnpike road shall have become an ordinary highway, all bridges which were previously repaired by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly: provided that for the purposes of this Act such bridges shall be treated as if they were bridges built subsequently to the passing of the H. Act 1835."

As to above, 21st and 22nd sections, applying to county authorities in South Wales, see 44 Vict. c. 14, Part XI.

bution under this section, see 43 & 44 Vict. c. 5. As to such power by county authorities in South Wales, see 44 Vict. c. 14, Part XI. Chap. XIV

### *Extraordinary Traffic.*

XXIII. Where by a certificate of their surveyor it appears to the authority which is liable or has undertaken (b) to repair any highway, whether a main road or not, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary (c) expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive (c) weight passing along the same, or extraordinary traffic thereon, such authority may

Power of  
road  
authority to  
recover ex-  
penses of  
extraordi-  
nary traffic.

(b) See H. Act, 1835, s. 36, *ante*, p. 96; H. Act, 1864, s. 22, *ante*, p. 232.

(c) The appellant used on a highway a locomotive engine and waggons in order to carry goods and materials for the ordinary purposes of his estate. The engine was constructed and used in accordance with the Locomotives Acts, 1861 and 1865, and the weight of the engine and the width of its wheels were in compliance with sect. 28 of the Highways and Locomotives Amendment Act, 1878. Justices having made an order for the payment by the appellant of a sum to cover extraordinary expenses incurred by the highway authority by reason of the damage caused to the road by the use of the engine and waggons, it was—*Held*, on a case stated by the justices, that the question of what was “excessive weight” and “extraordinary traffic” within section 23, must be determined with reference to the ordinary traffic of the road, and its capacity for bearing weights, and not with reference to abnormal traffic merely, or to weight in excess of that authorized by statute, and therefore that the order of the justices was rightly made. *Lord Aveland v. Lucas*, 49 L. J. C. P. D. 643; L. R. 5 C. P. D. 351.

On complaint made by a highway authority against certain quarry owners to recover expenses alleged to have been incurred in repairing the damage done to the roads by the excessive weight and extraordinary traffic conducted by such quarry owners, it was found by the justices that stone quarries existed and were worked in three parishes of the district of the said authority and in other parishes in the neighbourhood, and that the stone traffic was a recognized business in such parishes; that the stone was carried by the owners in waggons from four-and-a-half to six tons weight, and that such are the usual weights in the stone traffic; that since 1874 the roads had been formed and maintained with reference to the stone traffic of more expensive and durable materials than the neighbouring roads subject only to agricultural traffic.

On appeal against an order made by the justices for the pay-

**Part II.** recover in a summary (a) manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid.

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

These provisions will doubtless prove serviceable in enabling highway parishes to recoup the excessive expenditure not unfrequently occasioned by extraordinary and exceptionally heavy traffic arising from building and similar operations of a temporary character, and from other causes by which the road accommodation provided for all alike at the public expense is sometimes abused by individuals for private purposes.—*Extract from Letter from Loc. Gov. Bd.*

### *Discontinuance of unnecessary Highways.*

Unnecessary  
highways  
may be de-  
clared not  
repairable

**XXIV.** If any authority liable to keep any highway in repair is of opinion that so much of such highway as lies within any parish situate in a petty sessional division is unnecessary for public use, and therefore ought

ment by the quarry owners of expenses as being extraordinary expenses incurred by reason of excessive weight having passed along the road,—*Held*, that there was no evidence upon which the justices could find the weight to be excessive, and that they were right in finding that the traffic was not extraordinary within the meaning of sect. 23 (*Wallington v. Hoskins*, 50 L. J. M. C. 19). *et per* Lord COLERIDGE, C. J. "Nothing can be clearer or better than the words of Mr. Justice LINDLEY, which I desire to adopt. 'It appears to me that those words must mean excessive and extraordinary with reference to the ordinary use and traffic upon and over the road. If anything is done of an unusual and extraordinary kind, the person doing it must pay for the damage thereby occasioned. It is the ordinary nature of the traffic over the road which is to be the standard.'"

(a) See sect. 36, *post*, p. 284.

not to be maintained at the public expense, such authority (in this section referred to "as the applicant authority") may apply to the court of summary jurisdiction of such petty sessional division to view by two or more justices, being members of the court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and by public notice, appoint a time and place, not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public. Chap. XIV.  
at the public  
expense (b).

On the day and at the place appointed, the court shall hear any persons objecting to an order being made by the court that such highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an order either dismissing the application or declaring such highway unnecessary for public use, and that it ought not to be repaired at the public expense.

If the court make such last-mentioned order as aforesaid, the expenses of repairing such highway shall cease to be defrayed out of any public rate.

Public notice of the time and place appointed for hearing a case under this section shall be given by the applicant authority as follows; that is to say,

- (1.) By advertising a notice of the time and place appointed for the hearing and the object of the hearing, with a description of the high-

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(b) See previous provisions, H. Act, 1835, ss. 84, 85, *ante*, pp. 138—140; H. Act, 1864, s. 21, *ante*, p. 231. By the provisions in the H. Act, 1835, it will be noticed a highway may be stopped up; by the above 24th sect. of H. Act, 1878, a highway may be declared *not repairable at the public expense*.

(c) See sect. 36, *post*, p. 284.

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way to which it refers in some local newspaper circulating in the district in which such highway is situate once at least in each of the 4 weeks preceding the hearing ; and

- (2.) By causing a copy of such notice to be affixed, at least 14 days before the hearing, to the principal doors of every church and chapel in the parish in which such highway is situate, or in some conspicuous position near such highway.

And the application shall not be entertained by the court until the fact of such public notice having been given is proved to its satisfaction.

If at any time after an order has been made by a court of summary jurisdiction under this section, upon application of any person interested in the maintenance of the highway in respect of which such order has been made, after one month's previous notice in writing thereof to the applicant authority, it appears to the court of quarter sessions that from any change of circumstances since the time of the making of any such order as aforesaid such highway has become of public use, and ought to be maintained at the public expense, the court of quarter sessions may direct that the liability of such highway to be maintained at the public expense shall revive from and after such day as they may name in their order, and such highway shall thenceforth be maintained out of the rate applicable to payment of the expenses of repairing other highways repairable by the applicant authority; and the said court of quarter sessions may by their order direct the expenses of and incident to such application to be paid as they may see fit.

Any order of a court of summary jurisdiction under this section shall be deemed to be an order from which an appeal lies to a court of quarter sessions (a).

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(a) See sect. 37, *post*, p. 285.

## Chap. XIV.

*Appointment of Surveyors in certain Parishes.*

XXV. Whereas doubts have arisen whether a surveyor of highways can be appointed, in pursuance of the H. Act, 1835 (*b*), for a parish which does not maintain any highway: Be it therefore enacted, that it shall be lawful for the inhabitants in vestry assembled of any parish or place having a known legal boundary (notwithstanding that the inhabitants at large are not for the time being liable to maintain any highway or to contribute to any rate applicable to the maintenance of highways), or, on the neglect or refusal of such inhabitants, for the justices at a special sessions for the highways or in petty sessions assembled, at any time to exercise all the powers of the H. Acts with respect to the election or appointment of a surveyor of highways with or without a salary for such parish or place; and any surveyor so elected or appointed shall have all the powers and duties (including the power of making, assessing, and levying of highway rates) of a surveyor under the H. Acts.

Removal of  
doubt as to  
appointment  
of surveyors  
in certain  
parishes.

*Bye-laws by County Authority.*

XXVI. A county authority (*c*) may from time to time make, with respect to all or any main roads or other highways within any highway area (*d*) in their county, and when made (*e*) alter or repeal, bye-

Power of  
county au-  
thority to  
make bye-  
laws.

(*b*) 5 & 6 Will. 4, c. 50. See sects. 6 and 11 of this Act, *ante*, pp. 73, 77.

(*c*) See sect. 38, *post*, p. 286.

(*d*) See sect. 14, *ante*, p. 267, and sect. 38, *post*, p. 286.

(*e*) The following is from a letter from the Local Government Board, dated 18th September, 1878, with reference to this section.

All bye-laws framed under the Act, in order to be of any validity, must be confirmed by the Local Government Board, and no bye-law can be confirmed until the expiration of a month after notice of the intention to apply for the confirmation of the same has been given by the county authority in one or more of the local newspapers circulating in the county.

Part II.

laws (a) for all or any of the purposes following; that is to say,

- (1.) For prohibiting or regulating the use of any waggon wain cart or carriage drawn by animal power and having wheels of which the fellys or tires are not of such width in proportion to the weight carried by, or to the size of, or to the number of wheels of such waggon wain cart or carriage, as may be specified in such bye-laws; and
- (2.) For prohibiting or regulating the use of any waggon wain cart or other carriage drawn by animal power not having the nails on its wheels countersunk in such manner as may be specified in such bye-laws, or having on its wheels bars or other projections forbidden by such bye-laws; and
- (3.) For prohibiting or regulating the locking of the wheel of any waggon wain cart or carriage

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It is obvious that great hardship and confusion would be occasioned in the case of the bye-laws made for the regulation of waggons and other vehicles used for heavy traffic, unless the regulations adopted in each county are as far as practicable of a uniform character, and with a view of securing this result without causing unnecessary trouble or delay the president suggests that the drafts of any bye-laws which the county authority propose to make should be transmitted to the board for comparison with those proposed by other authorities before the same are finally adopted by the county authority.

In framing bye-laws it is essential to bear in mind that they must be reasonable, and that the restrictions which they impose should not interfere oppressively with the reasonable rights or claims of those whom they are intended to control.

Moreover, bye-laws are intended to supplement and not to supersede or vary the law; and in framing them a safe rule to follow is that a bye-law which merely repeats a statutory enactment is in fact surplusage, whilst one which is at variance either with an enactment or any recognized legal principle is altogether a nullity and consequently incapable of being enforced.

(a) Bye-laws have to be confirmed by the Local Government Board; see sect. 35, *post*, p. 284. The Local Government Board have issued model bye-laws; they can be obtained at Shaw & Sons, Fetter Lane, E.C., and will assist a county authority in making bye-laws under this section.

drawn by animal power when descending a hill, unless there is placed at the bottom of such wheel during the whole time of its being locked a skidpan slipper or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel; and

- (4.) For prohibiting or regulating the erection of gates across highways, and prohibiting gates opening outwards on highways; and
- (5.) For regulating the use of bicycles.

Fines to be recovered summarily (*b*) may be imposed by any such bye-laws on persons breaking any bye-law made under this section, provided that no fine exceeds for any one offence the sum of £2, and that the bye-laws are so framed as to allow of the recovery of any sum less than the full amount of the fine.

#### *Saving for Minerals.*

XXVII. Notwithstanding anything contained in sect. 68 of the Public Health Act, 1848 (*c*), or in sect. 149 of the Public Health Act, 1875 (*d*), all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have

To whom  
minerals  
under dis-  
turnpiked  
roads to  
belong.

(*b*) See sect. 36, *post* p. 284.

(*c*) 11 & 12 Vict. c. 63.

(*d*) 38 & 39 Vict. c. 55, Part III. This section removes a doubt with respect to the ownership of minerals under highways transferred to urban sanitary authorities upon the formation of local government districts, and which has been occasioned by the decision of the high court of justice in the case of *Coverdale v. Charlton*, L. R. 3 Q. B. D. 376; 47 L. J. Q. B. 446. (Extract from letter from Local Government Board to clerks to urban sanitary authorities, dated 30th September, 1878.)



- Part II.** the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so nevertheless that in such working and getting no damage shall be done to the road or highway.

This section shall extend to the Isle of Wight and to South Wales, as defined by the said Act of the 23 & 24 Vict. c. 68, intituled "An Act for the better management and control of the highways in South Wales." [See Part XI.]

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## PART II.

### AMENDMENT OF LOCOMOTIVE ACTS, 1861 AND 1865.

Weight of  
locomotives  
and construc-  
tion of  
wheels.

XXVIII. Section 3 of the Locomotive Act, 1861, and section 5 of the Locomotive Act, 1865 (*a*), are hereby repealed, so far as relates to England, and in lieu thereof be it enacted that it shall not be lawful to use on any turnpike road or highway a locomotive constructed otherwise than in accordance with the following provisions; (that is to say,)

- (1.) A locomotive (*b*) not drawing any carriage, and not exceeding in weight 3 tons, shall have the tires of the wheels thereof not less than 3 inches in width, with an additional inch for every ton or fraction of a ton above the first 3 tons; and
- (2.) A locomotive drawing any waggon or carriage shall have the tires of the driving wheels thereof not less than 2 inches in width for every ton in weight of the locomotive, unless the diameter of such wheels shall exceed 5

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(*a*) 24 & 25 Vict. c. 70; 28 & 29 Vict. c. 83, Part VIII. See *Stringer v. Sykes*, 46 L. J. M. C. 139; *Body v. Jeffery*, 47 L. J. M. C. 69, decided on repealed sections.

(*b*) See definition of locomotive, sect. 38, *post*, p. 289.

feet, when the width of the tires may be reduced in the same proportion as the diameter of the wheels is increased, but in such case the width of such tires shall not be less than 14 inches; and Chap. XIV.

- (3.) A locomotive shall not exceed 9 feet in width or 14 tons in weight, except as hereinafter provided; and
- (4.) The driving (c) wheels of a locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than 3 inches in width nor more than three quarters of an inch in thickness, extending the full breadth of the tire, and the space intervening between each such cross-bar shall not exceed 3 inches.

The owner of any locomotive used contrary to the foregoing provisions shall for every such offence be liable to a fine not exceeding £5: Provided that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may, on the application of the owner of any locomotive exceeding 9 feet in width or 14 tons in weight, authorise such locomotive to be used on any turnpike road or highway within the areas respectively above mentioned, or part of any such road or highway, under such conditions (if any) as to them may appear desirable. Provided also, that the owner of a locomotive used contrary to the provisions of sub-section 2 of this section shall not be deemed guilty of an offence under this section if he proves to the satisfaction of the court having cognizance of the case that such locomotive was constructed before the passing of this Act,

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(c) *Stringer v. Sykes*, L. R. 2 Ex. D. 240; *Body v. Jeffery*, L. R. 2 Ex. D. 95, decided on repealed provision which differed from this.

**Part II.**

and that the tires of the wheels thereof are not less than 9 inches in width.

Amendment  
of 28 & 29  
Vict. c. 83,  
s. 3.

XXIX. The paragraph numbered "secondly" of section 3 of the Locomotive Act, 1865, is hereby repealed, so far as relates to England, and in lieu thereof the following paragraph is hereby substituted: namely,

"Secondly, one of such persons, while the locomotive is in motion, shall precede by at least 20 yards the locomotive on foot, and shall in case of need assist horses, and carriages drawn by horses, passing the same."

Steam loco-  
motives to be  
constructed  
so as to con-  
sume their  
smoke.

XXX. Section 8 of the Locomotive Act, 1861, is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that every locomotive used on any turnpike road or highway shall be constructed on the principle of consuming its own smoke; and any person using any locomotive not so constructed, or not consuming so far as practicable, its own smoke, shall be liable to a fine not exceeding £5 for every (a) day during which such locomotive is used on any such turnpike road or highway.

Power to  
local authori-  
ties to make  
orders as to  
hours during  
which loco-  
motives may  
pass over  
roads.

XXXI. Section 8 of the Locomotive Act, 1865 (b), is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may make bye-laws (c)

(a) See *Smith v. Stokes*, 27 J. P. 535.

(b) 28 & 29 Vict. c. 83, Part VIII.

(c) As to confirmation of bye-laws, see sect. 35, *post*, p. 284. The Local Government Board have issued model bye-laws, which can be obtained at Shaw & Sons, Fetter Lane, E.C., and will assist in forming bye-laws under this section.

as to the hours during which locomotives are not to pass over the turnpike roads or highways situate within the areas respectively above-mentioned, the hours being in all cases consecutive hours and no more than 8 out of the 24, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge where such authority is satisfied that such use would be attended with danger to the public; and any person in charge of a locomotive acting contrary to such bye-laws shall be liable to a fine not exceeding £5. Chap. XIV.

XXXII. A county authority may from time to time make, alter, and repeal bye-laws for granting annual licenses to locomotives used within their county, and the fee (d) (not exceeding £10) to be paid in respect of each license; and the owner of any locomotive for which a license is required under any bye-law so made who uses or permits the same to be used in contravention of any such bye-law shall be liable to a fine not exceeding 40s. for every (e) day on which the same is so used. Power of county authority to license locomotives.

All fees received under this section shall be carried to and applied as part of the county rate.

This section shall not apply to any locomotive used solely for agricultural purposes.

XXXIII. This part of this Act shall remain in force so long only as the Locomotive Act, 1865 (f), continues in force. Duration of Part II. of Act.

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(d) The following is from a letter from the Local Gov. Board, dated 18th September, 1878 :—

In determining the fee to be paid it must be borne in mind that there will be many instances in which the same locomotive will be used in more than one county, and special provision will have to be made for these cases. This may perhaps be done by requiring the full fee, whatever may be the amount fixed, to be paid in the county where the license is taken out, the county officer obtaining from the other counties the necessary licenses afterwards and paying over to them their proportion of the aggregate fee.

(e) See *Smith v. Stokes*, 27 J. P. 535.

(f) 28 & 29 Vict. c. 83, Part VIII.

## PART III.

*Procedure and Definitions.***Part II.**

Confirmation  
of provisional  
order.

XXXIV. It shall be lawful for the Local Government Board to submit any provisional order made by them under this Act to parliament for confirmation, and without such confirmation a provisional order shall not be of any validity.

Confirmation  
of bye-laws.

XXXV. A bye-law made under this Act, and any alteration made therein and any repeal of a bye-law, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board.

A bye-law made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district.

Recovery of  
penalties and  
expenses.

XXXVI. All offences, fines, and expenses under this Act, or any bye-law made in pursuance of this Act, may be prosecuted, enforced, and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

The expression "the Summary Jurisdiction Acts" means the Act 11 & 12 Vict. c. 43, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same (a).

The expression "court of summary jurisdiction" (a) means and includes any justice or justices of the peace,

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(a) See Summary Jurisdiction Act, 1879, *ante*, p. 68.

metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts: Provided that the court, when hearing and determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace. Chap. XIV.

XXXVII. If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act, the party so aggrieved may appeal (b) therefrom, subject to the conditions and regulations following: Form of  
appeal to  
quarter  
sessions.

- (1.) The appeal shall be made to the next practicable court of quarter sessions for the county or place where the decision appealed from was given holden not less than 21 days after the decision of the court from which the appeal is made; and
- (2.) The appellant shall, within 10 days after the pronouncing by the court of the decision appealed from, give notice to the other party and to the court of summary jurisdiction of his intention to appeal and of the ground thereof; such notice of appeal shall be in writing signed by the person or persons giving the same, or by his, her, or their solicitor on his, her, or their behalf; and
- (3.) The appellant shall, within 3 days after such notice, enter into a recognizance before a

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(b) An appeal also lies under Sum. Jur. Act, 1879, s. 32, *ante*, p. 69.

**Part II.**

- justice of the peace, with 2 sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow ; and
- (4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody :
- (5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

**Interpreta-  
tion.****XXXVIII. In this Act—**

“ County ” has the same meaning as it has in the H. Acts, 1862 and 1864 (*a*), except that every liberty (*b*) not being assessable to the county rate of the county or counties within which it is locally situate shall, for the purposes of this Act other

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(*a*) *Ante*, pp. 185, 222.

(*b*) The following is an extract from a letter from the Local Gov. Board, dated 18th Sept. 1878, with reference to this Act :—  
It should be also pointed out that, as regards repayments for repairs, every liberty, not being assessable to the county rate of

than those relating to the formation and alteration of highway districts, and the transfer of the powers of a highway board, be deemed to be a separate county: Chap. XIV.

“County authority” means the justices of a county in general or quarter sessions assembled:

“Borough” means any place for the time being subject to the Act of the 5 & 6 Will. 4, c. 76, intituled “An Act to provide for the regulation of municipal corporations in England and Wales,” and the Acts amending the same:

“Highway district” means a district constituted in pursuance of the H. Act, 1862, and the H. Act, 1864 (c), or one of such Acts:

“Highway board” means the highway board having jurisdiction within a highway district:

“Highway parish” means a parish or place included or capable of being included in a highway district in pursuance of the H. Acts, 1862 and 1864 (c), or one of such Acts:

“Highway authority” means as respects an urban sanitary district the urban sanitary authority, and as respects a highway district the highway board, and as respects a highway parish the surveyor or surveyors or other officers performing similar duties:

“Rural sanitary district” and “rural sanitary authority” mean respectively the districts and authorities declared to be rural sanitary districts and authorities by the Public Health Act, 1875 (d):

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the county within which it is locally situate, is to be deemed a separate county. The counties, therefore, in which the liberties of Peterborough, Ripon, the Isle of Ely, and the Cinque Ports are geographically situate will not be liable to contribute towards the maintenance of the disturnpiked roads within those liberties.

(c) *Ante*, pp. 185, 221.

(d) 38 & 39 Vict. c. 55. See sect. 9 of that Act, *post*. p. 297.



**Part II.**

“Urban sanitary district” and “urban sanitary authority” mean respectively the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1875, except that for the purposes of this Act no borough having a separate court of quarter sessions, and no part of any such borough, shall be deemed to be or to be included in any such district, and where part of a parish is included in such district for the purpose only of the repairs of the highways such part shall be deemed to be included in the district for the purposes of this Act :

“The metropolis” (a) means the parishes and places mentioned in the Schedules A., B., and C., annexed to the Metropolis Management Act, 1855, (b) and any parish to which such Act may be extended by Order in Council in manner in the said Act provided ; also the City of London and the liberties of the said city :

“Quarter sessions” includes general sessions :

“Petty sessional division” means any division for the holding a special sessions formed or to be formed under the provisions of the Act 9 Geo. 4, c. 43, or any Act amending the same ; also any division of a county, or of a riding, division, parts, or liberty of a county, having a separate commission of the peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places, in accordance with any custom, or

(a) The following is an extract from the above letter from the Local Gov. Board.

In connexion with this point it must also be noticed that the metropolis is excluded from this part of the Act, so that in assessing the county rate for the metropolitan counties the metropolitan parishes, as regards the repayments for disturnpiked roads, cannot be charged with any portion of the contribution, which will be levied exclusively upon the parishes constituting the remaining highway areas within those counties.

(b) 18 & 19 Vict. c. 120.

otherwise than under the said last-mentioned Act; Chap. XIV.  
but does not include any city, borough, town corporate, or district constituted a petty sessional division by the Act 12 & 13 Vict. c. 18, intituled  
“An Act for the holding of petty sessions of the peace in boroughs, and for providing places for the holding of such petty session in counties and boroughs:”

“Locomotive” (c) means a locomotive propelled by steam or by other than animal power:

“Person” includes a body of persons corporate or unincorporate:

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(c) A tricycle propelled by steam is a locomotive within the Act. *Parkyn v. Priest*, 4th July, 1881, Q. B. D.

**Part III.**

**PART III.**

**CHAPTER XV.**

**THE PUBLIC HEALTH ACT, 1875.<sup>(a)</sup>**

**38 & 39 VICT. CAP. 55.**

IN this chapter is noticed some of the most important provisions in the above Act relating to Highways. As to this Act and the powers conferred by it, some work treating on the subject should be consulted.

Interpreta-  
tion clause.

IV. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them, that is to say,—

“Borough” means any place for the time being subject to the Act of the 5 & 6 Will. 4, c. 76, intituled “An Act to provide for the regulation of municipal corporations in England and Wales” and any Act amending the same :

“The metropolis” means the City of London and all parishes and places mentioned in Schedules A, B., and C. to the Metropolis Management Act, 1855.

“Local government district” means any area subject to the jurisdiction of a local board constituted

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<sup>(a)</sup> This Act does not extend to Scotland or Ireland, nor (save as by this Act is expressly provided) to the metropolis.

in pursuance of the Local Government Acts before the passing of this Act, or in pursuance of this Act, and "local board" means any board so constituted :

- "Improvement Act district" means any area for the time being subject to the jurisdiction of any improvement commissioners as hereinafter defined :
- "Improvement commissioners" means any commissioners, trustees, or other persons invested by any local Act with powers of town government and rating :
- "Parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed :
- "Union" means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of parliament, and includes any parish subject to the jurisdiction of a separate board of guardians :
- "Guardians" means any persons or body of persons by whom the relief of the poor is administered in any union :
- "Person" includes any body of persons, whether corporate or unincorporate :
- "Local authority" means urban sanitary authority and rural sanitary authority :
- "Surveyor" includes any person appointed by a rural authority to perform any of the duties of a surveyor under this Act :
- "Lands" and "premises" include messuages, buildings, lands, easements, and hereditaments of any tenure :
- "Owner" means the person for the time being receiving the rack-rent of the lands or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same

Part. III.

if such lands or premises were let at a rack-rent :

“ Rack-rent ” means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises ; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant’s rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent :

“ Street ” includes any highway (not being a turnpike road (a) ), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not :

“ House ” includes (b) schools, also factories and other buildings in which [more (c) than 20] persons are employed [at one time (c)] .

“ Drain ” means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed :

“ Sewer ” includes (d) sewers and drains of every

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(a) See *Nutter v. Accrington Local Board of Health*, 48 L. J. Q. B. 487.

(b) See *Hole v. Commissioners of Milton*, 31 J. P. 323 ; *Steele v. Midland Ry. Co.*, L. R. 1 Ch. App. 275.

(c) The parts within brackets are repealed by 41 Vict. c. 16, s. 107.

(d) See *Sutton v. Mayor of Norwich*, 31 L. T. 389. R. v. God-

description, except drains to which the word **Chap. XV.**  
**"drain"** interpreted as aforesaid applies, and

except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act :

**"Slaughter-house"** includes the buildings and places commonly called slaughter-houses and knackers yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale :

**"Water company"** means any person or body of persons corporate or unincorporate supplying, or who may hereafter supply, water for his or their own profit :

**"Waterworks"** includes streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also the stock-in-trade of any water company :

**"Bakehouse Regulation Act"** means 26 & 27 Vict. c. 40 (Bakehouse Regulation Act, 1863):

**"Artizans' and Labourers' Dwelling Act"** means 31 & 32 Vict. c. 130 (Artizans' and Labourers' Dwelling Act, 1868).

**"Baths and Washhouses Acts"** means 9 & 10 Vict. c. 74. (An Act to encourage the establishment of Public Baths and Washhouses) ; 10 & 11 Vict. c. 61. (An Act to amend the Act for the establishment of Public Baths and Washhouses) :

**"Labouring Classes Lodging Houses Acts"** means 14 & 15 Vict. c. 34 (Labouring Classes Lodging Houses Act, 1851) ; 29 & 30 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1866) ; 30 & 31 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1867):

**Part III.**  

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"Sanitary Acts" means all the above-mentioned Acts and the Acts mentioned in Part I. of Sch. 5 to this Act:"

"Sanitary purposes" means any object or purposes of the Sanitary Acts:

"Court of quarter sessions" means the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of general or quarter sessions arises:

"Court of summary jurisdiction" means any justice or justices of the peace, stipendiary or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the summary Jurisdiction Acts or any Acts therein referred to: [*see ante*, p. 66.]

"Summary Jurisdiction Acts" means the Act of the 11 & 12 Vict. c. 43, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same. [*see ante*, p. 66.]

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**PART II.**

Of the Act is thus headed:

**AUTHORITIES FOR EXECUTION OF ACT.****CONSTITUTION OF DISTRICTS AND AUTHORITIES.**

England  
divided into  
districts.

V. For the purposes of this Act England, except the metropolis, shall consist of districts to be called, respectively,—

(1.) Urban sanitary districts, and

(2.) Rural sanitary districts;

(in this Act referred to as urban and rural districts), and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities, called

urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned. Chap. XV.

VI. Urban districts shall consist of the places in that behalf mentioned in the first column of the table in this section contained, and urban authorities shall be the several bodies of persons specified in the second column of the said table in relation to the said places respectively :

| Urban District.                                                                                                                                                                                                        | Urban Authority.                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| Borough constituted such either before or after the passing of this Act                                                                                                                                                | The mayor, aldermen, and burgesses acting by the council. |
| Improvement act district constituted such before the passing of this Act, and having no part of its area situated within a borough or local government district                                                        | The improvement commissioners.                            |
| Local government district constituted such either before or after the passing of this Act, having no part of its area situated within a borough, and not coincident in area with a borough or improvement act district | The local board.                                          |

Provided that—

- (1.) Any borough, the whole of which is included in and forms part of a local government district or improvement act district, and any improvement act district, which is included in and forms part of a local government district, and any local government district which is included in and forms part of an improvement act district, shall for the purposes of this Act be deemed to be absorbed in the larger district in which it is included, or of



Part III.

which it forms part; and the improvement commissioners or local board as the case may be of such larger district, shall be the urban authority therein; and

- (2.) Where an improvement act district is coincident in area with a local government district, the improvement commissioners, and not a local board, shall be the urban authority therein; and
- (3.) Where any part of an improvement act district is situated within a borough or local government district, or where any part of a local government district is situated within a borough, the remaining part of such improvement act district or of such local government district so partly situated within a borough shall for the purposes of this Act continue subject to the like jurisdiction as it would have been subject to if this Act had not been passed, unless and until the Local Government Board by provisional order otherwise directs.

For the purposes of this Act, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport, Isle of Wight, shall not be deemed to be boroughs, and the borough of Cambridge shall be deemed to be an improvement act district, and the borough of Oxford to be included in the local government district of Oxford, so much of the borough of Folkestone as is not included within the local government district of Sandgate shall be an urban district, and shall be under the jurisdiction, for the purposes of this Act, of the authority for executing "The Folkestone Improvement Act, 1855."

Incorporation  
of local  
boards, &c.

VII. Every local board, and any improvement commissioners being an urban authority and not otherwise incorporated, shall continue to be or be a body corpo-

rate, designated (in the case of local boards and improvement commissioners being urban sanitary authorities at the time of the passing of this Act) by such name as they then bear, and (in the case of local boards constituted after the passing of this Act) by such name as they may, with the sanction of the Local Government Board, adopt; with a perpetual succession and a common seal, and with power to sue and be sued in such name, and to hold lands without any license in mortmain for the purposes of this Act. Chap. XV.

IX. The area of any union which is not coincident in area with an urban district, nor wholly included in an urban district (in this section called a rural union), with the exception of those portions (if any) of the area which are included in any urban district, shall be a rural district, and the guardians of the union shall form the rural authority of such district: provided that—

Description  
of rural  
districts and  
rural authorities.

- (1.) An *ex officio* guardian resident in any parish or part of a parish belonging to such union, which parish or part of a parish forms or is situated in an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority, unless he is the owner or occupier of property situated in the rural district of a value sufficient to qualify him as an elective guardian for the union:
- (2.) An elective guardian of any parish belonging to such union, and forming or being wholly included within an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority;
- (3.) Where part of a parish belonging to a rural union forms or is situated in an urban district, the Local Government Board may by

**Part III.**  

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order divide such parish into separate wards, and determine the number of guardians to be elected by such wards respectively, in such manner as to provide for the due representation of the part of the parish situated within the rural district; but until such order has been made the guardian or guardians of such parish may act and vote as members of the rural authority in the same manner as if no part of such parish formed part of or was situated in an urban district.

Where the number of elective guardians who are not by this section disqualified from acting and voting as members of the rural authority is less than five, the Local Government Board may from time to time by order nominate such number of persons as may be necessary to make up that number from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for the union, and the persons so nominated shall be entitled to act and vote as members of the rural authority, but not further or otherwise.

Subject to the provisions of this Act, all statutes, orders, and legal provisions applicable to any board of guardians shall apply to them in their capacity of rural authority under this Act for purposes of this Act; and it is hereby declared that the rural authority are the same body as the guardians of the union or parish for or within which such authority act.

**Powers and  
duties of  
urban autho-  
rities.**

Section 10 confers certain powers on an urban authority, and enacts that "where any local Act other than an Act for the conservancy of any river is in force within the district of an urban authority, conferring on any commissioners, trustees, or other persons powers for purposes the same as or similar to those of this Act (but not for their own pecuniary benefit), all the powers, rights, duties, capacities, liabilities, and obliga-

tions of such commissioners, trustees, or other persons in relation to such purposes shall be transferred and attach to the said urban authority." Chap. XV.

Section 12 relates to the vesting of property in local authorities.

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### PART III.

Of the Act is thus headed :

#### SANITARY PROVISIONS.

##### SEWERAGE AND DRAINAGE.

##### *Regulations as to Sewers and Drains.*

Section 13. Sewers, with certain exceptions, are vested in the local authority. Sewers vested in local authority.

XV. Every local authority shall keep in repair (a) all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act. Maintenance and making of sewers.

XVI. Any local authority may carry any sewer through, across, or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriage way of any street, and after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), into, through, or under any lands whatsoever within their district. Powers for making sewers.

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(a) As to the liability of local authority for negligence in this respect, see *Hammond v. Vestry of St. Pancras*, 43 L. J. C. P. 157.

**Part III.** They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.

Section 17. By this section sewage is to be purified before being discharged into streams, &c.

Alteration and discontinuance of sewers.

**XVIII.** Any local authority may from time to time enlarge, lessen, alter the course of, cover in, or otherwise improve any sewer belonging to them, and may discontinue, close up, or destroy any such sewer that has in their opinion become unnecessary, on condition of providing a sewer as effectual for the use of any person who may be deprived, in pursuance of this section, of the lawful use of any sewer: provided that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance.

Sewers to be kept so as not to be a nuisance.

**XIX.** Every local authority shall cause the sewers belonging to them to be constructed, covered, ventilated, and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.

Map of system of sewerage.

**XX.** An urban authority may, if they think fit, provide a map exhibiting a system of sewerage for effectually draining their district, and any such map shall be kept at their office, and shall at all reasonable times be open to the inspection of the ratepayers of their district.

Powers to owners, &c., to drain into drains.

Sections 21 and 22. These sections give certain powers to owners and occupiers to drain into the sewers of the local authority.

Penalty on unauthorized building

**XXVI.** Any person who in any urban district, without the written consent of the urban authority,—

- (1.) Causes any building to be newly erected over **Chap. XV.**  
 any sewer of the urban authority, or,  
 (2.) Causes any vault, arch, or cellar to be newly <sup>over sewers</sup>  
 built or constructed under the carriageway of <sup>and under</sup>  
<sup>streets</sup>  
 any street, <sup>in urban</sup>  
<sup>district.</sup>

shall forfeit to the urban authority the sum of £5, and a further sum of 40s. for every day during which the offence is continued after written notice in this behalf from the urban authority; and the urban authority may cause any building, vault, arch, or cellar erected or constructed in contravention of this section to be altered, pulled down, or otherwise dealt with as they may think fit, and may recover in a summary manner any expenses incurred by them in so doing from the offender.

Part III. of the Act also has the following heading:

## SCAVENGING AND CLEANSING.

### REGULATIONS AS TO STREETS AND HOUSES.

XLII. Every local authority may, and when re- <sup>Local</sup>  
 quired by order of the Local Government Board shall, <sup>authority to</sup>  
 themselves undertake or contract for— <sup>provide for</sup>  
<sup>cleansing of</sup>  
<sup>streets and</sup>  
<sup>removal of</sup>  
<sup>refuse.</sup>

The removal of house refuse from premises;

The cleansing of earth-closets, privies, ashpits, and cesspools,

either for the whole or any part of their district: Moreover, every urban authority and any rural authority invested by the Local Government Board with the requisite powers may, and when required by order of the said board shall, themselves undertake or contract for the proper cleansing of streets, and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district.

All matters collected by the local authority or contractor in pursuance of this section may be sold or otherwise disposed of; and any profits thus made by an

**Part III.** urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act; and any profits thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate out of which expenses incurred under this section by that authority in such contributory place are defrayed.

If any person removes or obstructs the local authority or contractor in removing any matters by this section authorized to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding £5: Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance.

Penalty on neglect of local authority to remove refuse, &c.

**XLIII.** If a local authority who have themselves undertaken or contracted for the removal of house refuse from premises, or the cleansing of earth-closets, privies, ashpits, and cesspools fail, without reasonable excuse, after notice in writing from the occupier of any house within their district requiring them to remove any house refuse or to cleanse any earth-closet, privy, ashpit, or cesspool belonging to such house, or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within 7 days, the local authority shall be liable to pay to the occupier of such house a penalty not exceeding 5*s.* for every day during which such default continues after the expiration of the said period.

Power of local authority to make bye-laws as to cleansing, &c.

**XLIV.** Where the local authority do not themselves undertake or contract for—

- The cleansing of footways and pavements adjoining any premises ;
- The removal of house refuse from any premises ;

The cleansing of earth-closets, privies, ashpits, and cesspools belonging to any premises, they may make bye-laws imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupier of any such premises. Chap. XV.

An urban authority may also make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish, and for the prevention of the keeping of animals on any premises so as to be injurious to health.

XLV. Any urban authority may, if they see fit, provide in proper and convenient situations receptacles for the temporary deposit and collection of dust, ashes, and rubbish; they may also provide fit buildings and places for the deposit of any matters collected by them in pursuance of this part of this Act. Power to provide receptacles for deposit of rubbish.

#### *Offensive Ditches and collections of Matter.*

XLVIII. Where any watercourse or open ditch lying near to or forming the boundary between the district of any local authority and any adjoining district is foul and offensive, so as injuriously to affect the district of such local authority, any justice having jurisdiction in such adjoining district may, on the application of such local authority, summon the local authority of such adjoining district to appear before a court of summary jurisdiction to show cause why an order should not be made by such court for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such court to be necessary; and such court, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and Offensive ditches lying near to or forming the boundary of districts.



**Part III.** also as to the amount thereof, and the time and mode of payment, as to such court may seem reasonable.

Removal  
of filth  
in urban  
district.

Section 49. This section gives power to remove filth in an urban district under certain circumstances.

## PART IV.

Of this Act is thus headed :

### LOCAL GOVERNMENT PROVISIONS.

#### HIGHWAYS AND STREETS.

##### *As to Highways.*

Powers of  
surveyors  
of highways,  
&c., under  
H. Act, 1835,  
vested  
in urban  
authority.

CXLIV. Every urban authority shall within their district, exclusively of any other person, execute the office of and be surveyor of highways, and have exercise and be subject to all the powers, authorities, duties, and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers, authorities, or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have exercise and be subject to all the powers, authorities, duties, and liabilities which by the H. Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district.

All ministerial Acts required by any Act of parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint (a).

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(a) The plaintiffs were owners of houses abutting on the High Street in the town of Northwich. Northwich is situate on a bed of rock-salt, and, in consequence of the exhaustion of the salt by natural and other causes, the surface of the ground from time to time subsides to a considerable extent. In 1870 the surface of High Street had subsided; it was then raised to what was esti-

As to the mode of compelling an urban authority to repair a highway, see H. Act, 1878, s. 10, *ante*, p. 263. **Chap. XV.**

It should be added that the Act so far as it relates to main roads and highways, does not apply to any urban sanitary district consisting of a borough with a separate court of quarter sessions; but at the same time it will be observed that when part of a parish is included in any urban sanitary district as defined by sect. 38 for the purpose only of the repairs of the highways, such part will be deemed to be included in the district for the purposes of the Act.

See further as to compelling an urban authority to perform its duty, sects. 299—302 of Public Health Act, 1875.

An action will not lie against the urban authority for non-repair of a highway. *Gibson v. Mayor of Preston*, 39 L. J. Q. B. 131.

**CXLV.** The inhabitants within any urban district shall not, in respect of any property situated therein, be liable to the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways without such district: provided, that any person who in any place after the passing of this Act ceases under or by virtue of any provision of

Inhabitants  
of urban  
district  
not liable  
to rates  
for roads  
without dis-  
trict.

dated to have been its former level, and the plaintiffs' houses were built at the same time. In 1876 the surface of the High Street, together with the plaintiffs' houses, had again subsided. The defendants, a local board, acting under the Public Health Act, 1875, restored the road to the level it was in 1870—a height which was found, having regard to the obstruction caused by occasional floods, to be reasonably necessary for the ordinary traffic, but putting floods out of the question, and having regard only to the inconvenience caused to the ordinary traffic in times other than the times of flood, was not necessary to so great an extent. The plaintiffs raised their houses to the same level by means of expensive machinery, and sought by arbitration proceedings, under sects. 179 and 180 of the Public Health Act, 1875, to recover from the defendants the expenses thereby incurred:—*Held*, that the plaintiffs could not recover from the defendants, for that they possessed no rights which the defendants had infringed; nor had the plaintiffs any right to compensation under sect. 308 of the Public Health Act, 1875, for that the Acts done by the defendants were not “an exercise of any of the powers of the Act,” but a fulfilment of their duty as surveyors of highways conferred on them by sect. 144. *Burgess v. Northwich Local Board*, 50 L. J. C. P. 219. *Nutter v. Accrington Board of Health*, 48 L. J. Q. B. 487.

**Part III.** this Act, or of any order made thereunder, to be surveyor of highways within such place, may recover any highway rate made in respect of such place, and remaining unpaid at the time of his so ceasing to be such surveyor as if he had not ceased to be such surveyor; and the money so recovered shall be applied, in the first place, in reimbursing himself any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction; and the surplus (if any, shall be paid by him to the treasurer of the urban authority, and carried to the fund or rate applicable to the repair of highways within their district.

Power of urban authority to agree as to making of new public roads.

CXLVI. Any urban authority may agree with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly become on completion highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads.

Power of urban authority to construct, &c., public bridges, &c., over or under canals, &c.

CXLVII. Any urban authority may agree with the proprietors of any canal, railway, or tramway to adopt and maintain any existing or projected bridge, viaduct, or arch within their district, over or under any such canal, railway, or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge, viaduct or arch, and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge, viaduct, or arch at the expense of such proprietors; they may also, with the consent of two-thirds of their number, agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any

such bridge, viaduct, or arch, or of the purchase of any adjoining lands required for the foundation and support thereof, or for the approaches thereto. Chap. XV.

**CXLVIII.** Any urban authority may, by agreement with the trustees of any turnpike road, or with any person liable to repair any street or road, or any part thereof, or with the surveyor of any county bridge, take on themselves the maintenance, repair, cleansing, or watering of any such street or road or any part thereof, or of any road over any county bridge, and the approaches thereto, or of any part of the said streets or roads within their district, and may remove any turnpike gates, toll gates, or bars which may be situated within their district, and may erect other turnpike gates, toll gates, or bars in lieu thereof, on such terms as the urban authority and such trustees or person or surveyor as aforesaid may agree on : Power of urban authority to enter into agreements with turnpike trustees as to repair, &c., of roads.

Provided—

That where any mortgage debt is charged on the tolls of any such turnpike road no agreement shall be made for the removal of any of the toll gates or bars thereon, unless with the previous consent in writing of a majority of at least two-thirds in value of the mortgagees ; and

That where the terms arranged include any annual or other payments from such urban authority to the trustees of any such turnpike road, then the payments may be secured on any fund or rate applicable by such authority to any of the purposes of this Act in the same manner as other charges on any such fund or rate are authorised by this Act.

Any executors, administrators, guardians, trustees, or committee of the estate of any idiot or lunatic, who are as such for the time being entitled to any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as

**Part III.** if they respectively were so entitled in their own right, discharged of all trusts in respect thereof; and all executors, administrators, guardians, trustees, and committees so consenting are hereby severally indemnified for so doing.

One half of all expenses incurred by the urban sanitary authority after the 29th September, 1878, in the maintenance of any main road, will be repaid to them out of the county rate, provided the county surveyor, or some other person appointed in that behalf by the county authority, who by the Act are defined to be "the justices of a county in general or quarter sessions assembled," certifies that the road has been maintained to his satisfaction.

The moiety thus repayable will, however, be confined to repairs defrayed out of the current rates, and will not include any repayment of moneys borrowed by the urban sanitary authority, or any interest thereon. (Extract from letter from Local Government Board dated 30th September, 1878.) As to what are main roads, see H. Act, 1878, ss. 13, 15, *ante*, pp. 266—271.

Where the urban sanitary authority consider that for either of the reasons mentioned, any ordinary highway in their district ought to become a main road, application should be made by them to the county authority, to make an order for this purpose. If that authority are satisfied, after causing the road to be inspected, that the application ought to be complied with, it will be incumbent on them to make an order declaring the highway to be a main road; but the order will not come into force unless confirmed by a subsequent order made within 6 months.

It will be obligatory on the urban sanitary authority to keep, in such form as may be directed by the county authority, a separate account of the expenses of the maintenance of the main roads within their district, and to forward copies of such account to the county authority at such times as may be required by them. The accounts so kept must be audited in the same manner as the other accounts of the urban sanitary authority, unless such authority are the council of a borough, in which case the accounts will be subject to such audit, as the county authority may direct.

Special attention should be paid to the requirements of the Act relating to the separate account referred to, for, if default is made in complying with these requirements, or with any directions given pursuant to them by the county

authority, that authority may withhold the contribution payable under the Act towards the maintenance of main roads by the urban sanitary authority for the year in which such default occurs. (Extract from letter from Local Government Board to clerks to urban sanitary authorities, dated 30th September, 1878.)

Chap. XV.

### *Regulation of Streets and Buildings.*

CXLIX. All streets, being or which at any time become highways repairable by the inhabitants at large within any urban district, and the pavements, stones, and other materials thereof, and all buildings, implements and other things provided for the purposes thereof, shall vest (a) in and be under the control of the urban authority.

Vesting of streets, &c., in urban authority.

The urban authority shall from time to time cause all such streets to be levelled, paved, metalled, flagged, channelled, altered, and repaired as occasion may require; they may from time to time cause the soil of

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(a) In 1771 the commissioners under an Inclosure Act set out E. and C. as private roads. In 1818, E. became a public road, and as such has since been repaired by the parish. C. has always continued to be a private way. Until 1863 the surveyor of highways, and subsequently the local board (to whom the office of surveyors of highways was then transferred, and who in 1875 became the urban authority for the district under the Public Health Act), were accustomed, year by year, to let the right of pasturage on the sides of E. and C., though several persons in the neighbourhood had insisted on the right to put cattle on both places without making any payment. In February, 1876, the local board let to the plaintiff the right of herbage on the sides of both E. and C. for a term, notwithstanding which the defendant insisted, during the continuance of the term, on turning out his cattle to graze on the sides of both roads. The plaintiff thereupon brought an action for trespass against the defendant—*Held*, that the action was maintainable so far as related to the sides of E., which by virtue of sect. 149 of the Public Health Act, 1875, had become vested in the local board in such a way as to confer the right of pasture; but that the plaintiff's claim failed as regarded C., the local board having no title, and there being no such actual or conclusive possession on the part of the plaintiff as would enable him to maintain an action for trespass against the defendant. *Coverdale v. Charlton*, 47 L. J. Q. B. 446. See H. Act, 1878, s. 27, ante, p. 279.

**Part III.** any such street to be raised, lowered, or altered as they may think fit, and may (a) place and keep in repair fences and posts for the safety of foot passengers (b).

Any person who, without the consent of the urban authority, wilfully displaces or takes up or who injures the pavement, stones, materials, fences, or posts of or the trees in any such street shall be liable to a penalty not exceeding £5, and to a further penalty not exceeding 5s. for every square foot of pavement, stones, or other materials so displaced, taken up, or injured; he shall also be liable, in the case of any injury to trees, to pay to the local authority such amount of compensation as the court may award.

Power to  
declare streets  
when sewered  
to be public  
highways.

**CLII.** When any street within any urban district not being a highway repairable by the inhabitants at large has been sewered, levelled, paved, flagged, metalled, channelled, and made good, and provided with proper means of lighting to the satisfaction of the urban authority (c), such authority may, if they think fit, by notice in writing, put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large; and every such notice shall be entered among the proceedings of the urban authority.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors of such street, by notice in writing to the

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(a) This is not obligatory so as to cast on the local board the duty of placing posts or rails by the side of ancient footpaths where none have previously existed, but only permissive, so as to give them the power in their discretion to do so, if they consider it necessary. *Wilson v. Mayor of Halifax*, 32 J. P. 230.

(b) See *Burgess v. Northwich Local Board*, ante, p. 304.

(c) See *R. v. Dukinfield (Inhab. of)*, 32 L. J. M. C. 230; *Willes v. Wallington*, 32 L. J. C. P. 86; *Hirst v. Local Board of Health of Halifax*, 40 L. J. M. C. 43.

urban authority, object thereto, and in ascertaining Chap. XV.  
such majority joint proprietors shall be reckoned as  
one proprietor.

By sect. 153 gas and water pipes may be required to be removed. Removing gas and water pipes.

CLIV. Any urban authority may purchase any pre- Power to purchase premises for improvement of streets.  
mises for the purpose of widening, opening, enlarging,  
or otherwise improving any street or (with the sanction  
of the Local Government Board) for the purpose of  
making any new street.

## PART V.

Of the Act is thus headed:

### GENERAL PROVISIONS.

This Part relates to—

CONTRACTS; PURCHASE OF LANDS; ARBITRATION;  
BYE-LAWS; OFFICERS AND CONDUCT OF BUSINESS  
OF LOCAL AUTHORITIES.

## PART VI.

Relates to

RATING AND BORROWING POWERS, &c.

*Highway Rate.*

CCXVI. In any urban district where the expenses Costs of repairs of highways.  
under this Act of the urban authority are charged on  
and defrayed out of the district fund and general dis-  
trict rates, and no other mode of providing for repair  
of highways is directed by any local Act, the cost of  
repair of highways shall be defrayed as follows (that is  
to say):



**Part III.**  
          

- (1.) Where the whole of the district is rated for works of paving, water-supply, and sewerage, or for works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate :
- (2.) Where parts of the district are not rated for works of paving, water-supply, and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of a highway rate to be separately assessed and levied in those parts (a) by the urban authority as surveyor of highways, and the cost of such repair in the residue of the district shall be defrayed out of the general district rate :
- (3.) Where no public works of paving, water-supply, and sewerage are established in the district, the cost of repair of highways in the district shall be defrayed out of a highway rate, to be levied throughout the whole district by the urban authority as surveyor of highways :

Provided that where part of a parish is included within an urban district, and the excluded part was, before the constitution of that district, liable to contribute to the highway rates for such parish, such excluded part shall (unless in the case of an urban district constituted before the passing of this Act a resolution deciding that such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act, 1858, Amendment Act, 1861), or unless such excluded part has been included in a highway district under the Highway Acts, for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district.

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(a) *Moseley v. Ely*, 6 E. & B. 518.

Provided also, that in the case of an urban district constituted after the passing of this Act a meeting of owners and ratepayers of the excluded part (to be convened and conducted in the manner provided by Schedule 3 to this Act) may decide that such excluded part shall be a highway parish, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a parish maintaining its own highways; but the requisition for holding any such meeting shall be made within 6 months after the constitution of the urban district. Chap. XV.

The court of quarter sessions may by order direct that for any such excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under the H. Acts.

CCXVII. It shall not be necessary for the urban authority, in the case of any highway rate made by them, to do the following acts, or any of them (that is to say):

To lay such rate before any justices, or obtain their allowance;

To annex thereto the signature of such urban authority;

To lay the same before the parishioners assembled in vestry;

To verify before any justices any accounts kept by them of such highway rates;

and all such accounts shall be audited in all respects in the same way as the other accounts of the urban authority.

Certain acts not required to be done in case of highway rate made by urban authority.

This Part of the Act further contains Provisions

As to Urban Rates.

As to Expenses of Rural Authority.

As to Borrowing Powers.

As to Audit of Accounts of Local Authorities.

## Part III.

## PART X.

Of the Act is headed thus :

## MISCELLANEOUS AND TEMPORARY PROVISIONS.

Compensation  
in case of  
damage by  
local  
authority.

CCCVIII. Where any person sustains any damage by reason of the exercise of any of the powers (a) of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers, and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed does not exceed the sum of £20, the same may, at the option of either party, be ascertained by and recovered before a court of summary jurisdiction.

## PART XI.

Of the Act is thus headed :

## SAVING CLAUSES AND REPEAL OF ACTS.

Powers of  
Act to be  
cumulative.

CCCXLI. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not passed ; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

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(a) See *Burgess v. Northwich Local Board*, ante, p. 304 ; *Nutt v. Accrington Board of Health*, ante, pp. 292, 305.

## PART IV.

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### CHAPTER XVI.

Chap. XVI.

### ACTS RELATING TO HIGHWAY RATES.

12 & 13 VICT. CAP. 14.

*An Act to enable Overseers of the Poor and Surveyors of the Highways to recover the Costs of distraining for Rates.*

[11th May, 1849.]

#### ABSTRACT OF THE ENACTMENTS.

1. *Where a warrant of distress is granted for a poor rate or highway rate, &c., the costs of obtaining it may also be levied.*
2. *Imprisonment in default of distress.—So much of 43 Eliz. c. 2, as relates to commitments for non-payment of rates, or for default of distress, repealed.—Power to order imprisonment not exceeding 3 months in default of distress.*
3. *One warrant may be issued against several ratepayers; but otherwise as to a commitment in default of distress.*
4. *To whom warrants of distress or commitment to be directed.*
5. *Summons, and how served; if not obeyed the justices may proceed ex parte.*
6. *On payment or tender of rate and costs proceedings to cease.*
7. *Costs already recovered or proceeded for deemed legal.*
8. *Forms in schedule valid.*
9. *(Applies to church rates only.)*

By this Act,

After reciting that by the 43 Eliz. c. 2, and 5 & 6 Will. 4, c. 50, provision is already made by law for the recovery of the sum or sums at which any person is rated or assessed to the relief of the poor, or is rated or assessed in any rate for the highways, in England or

**Part IV.** Wales, by distress and sale of his goods and chattels, and in default of such distress by commitment to prison until the same shall be paid; but no provision is made for levying the costs and expenses incurred by the overseers of the poor or the surveyors of highways in the recovery of the same respectively:—

It is enacted,

Where a warrant of distress is granted for a poor rate or highway rate, &c., the costs of obtaining it may also be levied.

I. That it shall be lawful hereafter for all justices of the peace if in their discretion they shall so think fit, in any warrant of distress they shall make and issue for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment for the relief of the poor or for the highways in England or Wales, or in or by any other rate or assessment which by law now or hereafter is or shall be directed to be enforced or recovered in the same manner as a poor rate, or in any warrant for the levying of any arrears of the same, to order that a sum, such as they may deem reasonable, for the costs and expenses which such overseers or surveyors, or the persons applying for such warrant, shall have incurred in obtaining the same, shall also be levied of the goods and chattels of the person or persons against whom such warrant shall be granted, together with the reasonable charges of the taking, keeping, and selling of the said distress.

II. And after reciting that by an Act, 43 Eliz. c. 2, intituled "An Act for the Relief of the Poor," it is amongst other things enacted, that, in default of distress for a poor rate, it shall be lawful for two justices of the peace to commit the party against whom the distress warrant shall have issued to the common gaol of the county, there to remain without bail or mainprize until payment: And that it is desirable to limit the time within which a person assessed to a poor rate, or any other of the rates or assessments aforesaid, may be imprisoned for non-payment of the same:—

It is enacted,

Chap. XVI.

That [(a) so much of the said recited Act as re-  
lates to the commitment of any person to the county  
gaol for non-payment of any poor rate, or for default of  
distress whereon to levy the same, shall be and the same  
is hereby repealed; and every person now undergoing  
any such imprisonment under or by virtue of the said  
recited Act shall be discharged from such imprisonment  
so soon as he or she shall have been imprisoned 3  
calendar months, or shall sooner pay the sum or sums  
with which he or she is charged; and that hereafter] when  
to any warrant of distress for the levying of any sum  
or sums to which any person or persons [is or are now  
or (a)] may hereafter be rated or assessed in or by any  
rate or assessment hereinbefore mentioned, it shall be  
returned by the constable or person having the execu-  
tion of such warrant that he could find no goods or  
chattels, or no sufficient goods or chattels, whereon to  
levy such sum or sums, together with the costs of or  
occasioned by the levying of the same, it shall be lawful  
for any two or more justices of the peace before whom  
the same shall be returned, or for any two or more  
justices of the peace for the same county, riding,  
division, liberty, city, borough, or place, if in their  
discretion they shall so think fit, to issue their warrant  
of commitment against the person with relation to  
whom such return shall be so made as aforesaid, in the  
form (D.) in the schedule to this Act annexed, or in  
any form to the like effect, and thereby order such  
person to be imprisoned in the common gaol or house  
of correction for any time not exceeding 3 calendar  
months, unless the sum or sums therein mentioned  
shall be sooner paid; and every such warrant of com-  
mitment made or issued for default of distress as  
aforesaid shall be made as well for the non-payment of

Imprisonment  
in default of  
distress.

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(a) The parts within brackets are repealed by Stat. Law Rev.  
Act, 1875.

**Part IV.** the costs and expenses so as aforesaid incurred in obtaining such warrant of distress, if the same shall be so ordered as aforesaid, and the costs attending the said distress, and also the costs and charges of taking and conveying the party to prison (the amount of such several costs, expenses, and charges being stated in such warrant of commitment), as for the non-payment of the sum or sums alleged to be due for the said rates respectively.

One warrant  
may be issued  
against several  
rate-  
payers, &c.

III. That for the saving of expense in the levying of any sum or sums for rate and costs as aforesaid it shall be lawful to make and issue one warrant of distress against any number of persons neglecting or refusing to pay the same, in the form in the schedule to this Act annexed; but nothing herein shall be deemed or construed to authorize justices in like manner to grant or issue one warrant of commitment against several persons in default of distress as aforesaid.

To whom  
warrants of  
distress or  
commitment  
to be issued.

IV. That the warrants aforesaid may be directed to the churchwardens and overseers of the poor, or the overseers of the poor, or the surveyors of the highways, respectively, and to the constable of the parish or township, and to any other person or persons, or to any one or more of them, as by the justices granting the same shall be deemed fit.

Summons,  
and how  
served.

V. That every summons to be issued against any person for non-payment of any sum for which he or she is or shall be so rated or assessed as aforesaid shall be directed to such person, and may be in the form (B.) in the schedule to this Act annexed, or in any form to the like effect; and the same may be served by any churchwarden or overseer of the poor, or surveyor of the highways, respectively, or constable or other person, to whom it shall be delivered for that purpose,

upon the person to whom it is so directed, by delivering Chap. XVI.  
 the same to the party personally or by leaving the  
 same with some person for him or her at his or her last  
 place of abode; and the person who shall serve the  
 same in manner aforesaid shall attend at the time and  
 place and before the justices in the said summons men-  
 tioned, to depose if necessary to the service of the said  
 summons; and if, upon the day and at the place ap-  
 pointed in and by the said summons for the appearance  
 of the party so summoned, such party shall fail to  
 appear accordingly in obedience to such summons, then  
 and in every such case, if it be proved upon oath or  
 affirmation to the justices then present that such sum-  
 mons was duly served as aforesaid a reasonable time  
 before the time so appointed for his or her appearance  
 as aforesaid, it shall be lawful for such justices of the  
 peace in their discretion, if they shall so think fit, to  
 proceed *ex parte*, in the same manner to all intents  
 and purposes as if such party had personally appeared  
 before them in obedience to the said summons.

If not obeyed  
 the justices  
 may proceed  
*ex parte*.

VI. That in all cases where any proceedings [(a) have  
 been or] shall [hereafter (a)] be taken to compel payment  
 of any sum for which any such person [is or (a)] shall  
 be so rated or assessed as aforesaid, if at any time before  
 such person shall be committed to and lodged in prison  
 for non-payment thereof, or for or by reason of its being  
 returned to such warrant of distress as aforesaid that  
 there are no goods or chattels or no sufficient goods or  
 chattels of such person whereon the same may be levied  
 as aforesaid, such person shall pay or tender to the  
 churchwardens or overseers of the poor, or any of them,  
 or to the surveyor of highways respectively, or other  
 person authorized to collect or receive such rate, the  
 sum so sought to be recovered, together with the amount

On payment  
 or tender of  
 rate and  
 costs pro-  
 ceedings to  
 cease.

---

(a) The parts within brackets are repealed by Stat. Law Rev.  
 Act, 1875.



**Part IV.** of all costs and expenses up to the time incurred in the proceedings so taken to compel payment thereof as aforesaid, then and in every such case the person to whom such sum and costs shall be so paid or tendered shall receive the same, and thereupon no further proceedings for the recovery of the same shall be had or taken.

Costs already recovered or proceeded for deemed legal.

**VII.** Repealed by Stat. Law Rev. Act, 1875.

And after reciting that it may be convenient, and save expense and litigation if forms to be used for the purpose of levying the sums aforesaid should be given,—

It is enacted,

Forms in schedule valid.

**VIII.** That the forms in the schedule to this Act contained, or forms to the same or the like effect, shall be deemed good, valid, and sufficient in law.

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## SCHEDULE.

(A. 1.)

*Complaint of the Overseers or Surveyors against one Ratepayer.*

Be it remembered, that on the                      day of                      ,  
To wit, {                      in the year of our Lord                      , the [churchwardens  
and overseers of the poor, or the surveyors of the highways] of the  
parish of                      , in the county of                      aforesaid, by C. D.,  
one of the said [overseers or surveyors], complained to the under-  
signed [one] of Her Majesty's justices of the peace in and for the  
said [county], that A. B. of the said [parish], being a person duly  
rated and assessed to [the relief of the poor, or the maintenance of  
the highways] of the said parish, in and by a rate\* made on the  
day of                      , in the year                      , in the sum of  
                    , hath not paid the same or any part thereof, but hath  
refused so to do: Wherefore the said [churchwardens and over-

\* Or, in and by several rates made on                      , and on                      ,  
in the several sums of                      , and of                      .

seers or surveyors] by C. D. aforesaid, pray that the said A. B. Chap. XVI.  
may be summoned to appear before two of Her Majesty's justices  
of the peace, to show cause why he hath not paid and refuses to  
pay the said sum.

C. D.

Made and exhibited before me ,  
at , in the county of }  
on this day of , 1849.  
E. F. }

(A. 2.)

*Complaint against several Ratepayers.*

To wit. } Be it remembered, that on the day of ,  
in the year of our Lord , the [churchwardens  
and overseers of the poor, or the surveyors of the highways] of the  
parish of , in the [county] of aforesaid, by C. D.,  
one of the said [overseers or surveyors], complain to the under-  
signed [one] of Her Majesty's justices of the peace in and for the  
said [county], that the several persons whose names are mentioned  
and set out in the schedule hereunder written, being persons duly  
rated and assessed to [the relief of the poor, or the maintenance of  
the highways] of the said parish, in and by the rates in the said  
schedule mentioned, in certain sums set down opposite to their  
respective names in the said schedule, have not respectively paid  
the said sums or any part thereof, but have respectively refused  
so to do: Wherefore the said [churchwardens and overseers, or  
surveyors], by C. D. aforesaid, pray that the said several persons  
may respectively be summoned to appear before two of Her  
Majesty's justices of the peace, to show cause respectively why  
they have not paid and refuse to pay the said sums respectively.

## SCHEDULE.

| Names of<br>the<br>Ratepayers. | Residence.       | Under Rate<br>dated the<br>1849. | Arrears due<br>under rate<br>dated the<br>1848. | Total Sum<br>due. |
|--------------------------------|------------------|----------------------------------|-------------------------------------------------|-------------------|
| A. B. - -                      | (here state it.) | £ s. d.<br>1 7 0                 | £ s. d.<br>1 7 0                                | £ s. d.<br>2 14 0 |
| I. K. - -                      | . .              | 0 13 0                           | . . .                                           | 0 13 0            |
| L. M. - -                      | . .              | . . .                            | 0 18 6                                          | 0 18 6            |
| N. P. - -                      | . .              | 0 14 3                           | 0 14 3                                          | 1 8 6             |

C. D.

Made and exhibited before me ,  
at , in the county of }  
on this day of , 1849.  
E. F. }

Y

**Part IV.**

(B.)

*Summons upon the Complaint.*

To A. B. of .

Whereas complaint hath this day been made before the undersigned [one] of Her Majesty's justices of the peace in and for the [county] of , by the [churchwardens and overseers of the poor, or surveyors of the highways] of the parish of , in the said [county], that you, being a person duly rated and assessed to [the relief of the poor, or the maintenance of the highways] of the said parish, in and by a rate made on the day of , 1849, in the sum of , hath not paid the same or any part thereof, but hath refused so to do: These are therefore to command you, in Her Majesty's name, to be and appear on , at o'clock in the forenoon, at , before such two or more justices of the peace for the said [county], as may then be there, to show cause why you have not paid and refuse to pay the same, otherwise you shall be proceeded against by default as if you had appeared, and be dealt with according to law.

Given under my hand and seal, this                      day of ,  
in the year of our Lord,                      , at                      , in the [county]  
aforesaid.

E. F.

Take notice that you have already incurred the undermentioned costs, viz. :—

|                                                             | s. | d. |
|-------------------------------------------------------------|----|----|
| Clerk to the justices - - - - -                             |    |    |
| Overseer [or surveyor], for obtaining the summons - - - - - |    |    |
| Constable for serving ditto - - - - -                       | 1  | 0  |
| Ditto, travelling expenses at threepence per mile - - - - - |    |    |
| Total - - - - -                                             |    |    |

If the amount of these charges, together with the rate claimed, be paid to the overseer [or surveyor] before the day on which the summons is returnable, all further proceedings will be stopped.

(C. 1.)

Chap. XVI.

*Warrant of Distress against one Ratepayer.*

To the overseers of the poor [or to the surveyors of the highways] of the parish of \_\_\_\_\_, in the [county] of \_\_\_\_\_, and to the constable of \_\_\_\_\_, and to all other peace officers in the said [county].

Whereas on \_\_\_\_\_ last past a complaint was made before E. F., one of Her Majesty's justices of the peace in and for the [county] of \_\_\_\_\_, by the [churchwardens and overseers of the poor, or surveyors of the highways] of the parish of \_\_\_\_\_, in the said [county], that A. B., being a person duly rated and assessed to the relief of the poor [or to the maintenance of the highways] of the said parish in and by a rate made on \_\_\_\_\_, in the sum of \_\_\_\_\_, had not paid the same or any part thereof, but had refused so to do; and now at this day, to wit, on \_\_\_\_\_, at \_\_\_\_\_, the parties aforesaid appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said county [or the said churchwardens and overseer, or surveyors, by C. D., one of the said overseers, or surveyors, appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said county; but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to us on oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here at this day before such two or more justices of the peace as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now having heard the matter of the said complaint, and it being now duly proved to us upon oath [in the presence and hearing of the said A. B.], that an assessment for the [relief of the poor, or the maintenance of the highways] of the said parish of \_\_\_\_\_, and for other purposes chargeable thereon according to law, dated the \_\_\_\_\_, was duly made, allowed, and published, and that the said A. B. is therein and thereby assessed at the sum of \_\_\_\_\_ aforesaid,\* and that the said sum hath been duly demanded of the said A. B., but that he hath not paid, and hath refused and still refuses to pay the same; and the said A. B. now not showing to us any sufficient cause for not paying the same, these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of [five] days after the making of such distress the said sum, and the sum of \_\_\_\_\_ for the costs incurred by the said [churchwardens and overseers, or surveyors] in obtaining this warrant, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale you retain the said sums of \_\_\_\_\_ and

\* "And that a certain other assessment for the relief," &c., to the asterisk, if there be arrears.

## Part IV.

, rendering the overplus, on demand, to the said A. B., the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.

Given under our hands and seals, this                      day of  
in the year of our Lord                      , at                      , in the [county]  
aforesaid.

E. F.  
G. H.

(C. 2.)

*Warrant of Distress against several Ratepayers.*

To the overseers of the poor or the surveyors of the highways of the parish of                      , in the [county] of                      , and to the constables of                      , and to all other peace officers in the said [county].

Whereas on                      last past a complaint was made before E. F., one of Her Majesty's justices of the peace in and for the [county] of                      , by the [churchwardens and overseers of the poor, or the surveyors of the highways] of the parish of                      , in the said [county], that the several persons whose names are mentioned and set forth in the schedule hereunder written, being persons duly rated and assessed to [the relief of the poor, or maintenance of the highways] of the said parish, in and by the rates in the schedule in that complaint and in this warrant underwritten, in certain sums set down opposite to their respective names in the said schedule, had not respectively paid the said sums or any part thereof, but had respectively refused so to do; and now at this day, to wit, on                      , at                      , the said [churchwardens and overseers, or surveyors] by C. D., one of the said overseers, or surveyors] and A. B., J. K., and L. M., some of the said parties in the said schedule mentioned, appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said [county]; but the said N. P., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to us on oath that the said N. P. has been duly served with the summons in this behalf, which required him to be and appear here at this day before such two or more justices of the peace as should now be here to answer the said complaint, and to be further dealt with according to law; and now having heard the matter of the said complaint against the several parties, and it being now duly proved to us upon oath, in the presence of the parties so appearing as aforesaid, that an assessment for [the relief of the poor] of the said parish of                      , and for other purposes chargeable therein according to law, dated the                      , was duly made, allowed, and published, and that the said several persons whose names are mentioned and set out in the schedule hereunder written are therein and thereby assessed at the sums set down opposite to their respective names in the said

schedule, and that the said several sums have been duly demanded Chap. XVI. of them respectively, but they have not nor hath any of them paid the said sums or any of them, or any part thereof, respectively, but they have refused and still do refuse to pay the same respectively, and have not, nor hath any of them, showed to us sufficient cause for not paying the same; these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the several persons whose names are mentioned and set out in the schedule hereunder written; and if within the space of *five* days after the making of such distresses respectively the said several sums set opposite to their respective names at which they were so rated and assessed as aforesaid, and the said several sums for costs incurred by the said [churchwardens and overseers, or surveyors] also set opposite to their respective names, together with the reasonable charges of taking and keeping the said distress in each case, shall not be paid, that then you do sell the goods and chattels of the party so making default so by you distrained, and out of the money arising by such sales respectively you retain the sums so set opposite to the name of each party whose goods you shall have so sold, rendering to him the overplus, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if in any of the cases mentioned in the schedule hereunder written no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.

## SCHEDULE.

| Names of Ratepayers. | Residence.      | Under Rate dated 1849. |    |    | Arrears due under Rate dated 1848. |    |    | Costs. |    |    | Total. |    |    |
|----------------------|-----------------|------------------------|----|----|------------------------------------|----|----|--------|----|----|--------|----|----|
|                      |                 | £                      | s. | d. | £                                  | s. | d. | £      | s. | d. | £      | s. | d. |
| A. B. -              | (here state it) | 1                      | 7  | 0  | 1                                  | 7  | 0  | 0      | 6  | 0  | 3      | 0  | 0  |
| I. K. -              | - - -           | 0                      | 13 | 0  | -                                  | -  | -  | 0      | 2  | 0  | 0      | 15 | 0  |
| L. M. -              | - - -           | -                      | -  | -  | 0                                  | 18 | 6  | 0      | 3  | 0  | 1      | 1  | 6  |
| N. P. -              | - - -           | 0                      | 14 | 3  | 0                                  | 14 | 3  | 0      | 5  | 0  | 1      | 13 | 6  |

Given under our hands and seals, this                      day of  
in the year of our Lord                      , at                      , in the [county]  
aforesaid.

E. F.  
G. H.

Part IV.

(D.)

*Warrant of Commitment in default of Distress.*

To the overseers of the poor [or the surveyors of the highways] of the parish of \_\_\_\_\_, in the [county] of \_\_\_\_\_, and to the constable of \_\_\_\_\_, and to all other peace officers in the said [county], and to the keepers of the [house of correction] at \_\_\_\_\_, in the said [county].

Whereas on \_\_\_\_\_ last past, a complaint was made before E. F., esquire, one of Her Majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, by the [churchwardens and overseers of the poor, or surveyors of the highways] of the parish of \_\_\_\_\_, in the said [county], that A. B., being a person duly rated to the [relief of the poor, or maintenance of the highways] of the said parish, in and by a rate made on \_\_\_\_\_, in the sum of \_\_\_\_\_, had not paid the same or any part thereof, but had refused so to do; and afterwards on \_\_\_\_\_, at \_\_\_\_\_, the parties aforesaid appeared before E. F. and G. H., esquires, two of Her Majesty's justices of the peace in and for the said county [or the said churchwardens and overseers, or surveyors, by C. D., one of the said overseers, or surveyors, appeared before E. F. and G. H., esquires, two of Her Majesty's justices of the peace in and for the said county; but the said A. B., although duly called, did not appear by himself, his counsel or attorney, and it was then satisfactorily proved to the said justices that the said A. B. had been duly served with the summons in that behalf, which required him to be and appear there at that day before such two or more justices of the peace as should then be there, to answer the said complaint, and to be further dealt with according to law]; and then having heard the matter of the said complaint, and it being then duly proved to the said justices upon oath [in the presence and hearing of the said A. B.] that an assessment for the [relief of the poor, or the maintenance of the highways,] of the said parish of \_\_\_\_\_, dated the \_\_\_\_\_, was duly made, allowed, and published, and that the said A. B. was therein and thereby assessed at the sum of \_\_\_\_\_ aforesaid, and that the said sum had been duly demanded of the said A. B., but that he had not paid, and had refused and still refused to pay the same, and the said A. B. then not showing to the said E. F. and G. H. any sufficient cause for not paying the same, the said justices thereupon then issued a warrant to \_\_\_\_\_ commanding them to levy, the said sum of \_\_\_\_\_, and the sum of \_\_\_\_\_ for the costs incurred in obtaining that warrant, by distress and sale of the goods and chattels of the said A. B.: And whereas it now appears to me, the undersigned, one of Her Majesty's justices of the peace in and for the said [county], as well by the return of the said \_\_\_\_\_ to the said warrant of distress as otherwise, that the said \_\_\_\_\_ hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sums above

mentioned could be found : These are therefore to command you **Chap. XVI.**  
the said [churchwardens and overseers, or surveyors] and constable  
and peace officers, or some or one of you, to take the said A. B.,  
and him safely to convey to the [house of correction] at  
aforesaid, and there deliver him to the said keeper, together with  
this precept ; and I do hereby command you the said keeper of  
the said [house of correction] to receive the said A. B. into your  
custody in the said [house of correction], there to imprison him for  
the space of , unless the said sums of and  
, together with the sum of for the costs attend-  
ing the said distress, and the further sum of , being the  
costs and charges of this commitment, and of taking and convey-  
ing the said A. B. to prison, making in the whole the sum of  
, shall be sooner paid unto you the said keeper ; and for  
your so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of ,  
in the year of our Lord, at , in the [county] afore-  
said.

J. S. (L.S.)

See the case of *Morrell v. Martin*, 4 Scott, N. R. 300, as to jus-  
tifying under a warrant of distress for a highway rate.

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**Part IV.**

**CHAPTER XVII.**

**THE POOR RATE ASSESSMENT AND  
COLLECTION ACT, 1869.**

**32 & 33 VICT. CAP. 41.**

*An Act for amending the Law with respect to the  
Rating of Occupiers for Short Terms, and for the  
making and collecting of the Poor's Rate.*

[26th July, 1869.]

**WHEREAS** it is expedient to amend the law relating to  
the collection of poor rates assessed upon occupiers of  
hereditaments held for short terms, and to the making  
and collecting of the poor rate :

Be it therefore enacted, &c.

Occupiers of  
tenements  
let for short  
terms may  
deduct the  
poor rate  
paid by  
them from  
their rents.

**I.** The occupier of any rateable hereditament let to  
him for a term not exceeding 3 months shall be entitled  
to deduct the amount paid by him in respect of any  
poor rate assessed upon such hereditament from the  
rent due or accruing due to the owner, and every such  
payment shall be a valid discharge of the rent to the  
extent of the rate so paid.

Amount  
of rate  
payable by  
occupier.

**II.** No such occupier shall be compelled to pay to  
the overseers at one time or within 4 weeks a greater  
amount of the rate than would be due for one quarter  
of the year.

Owners may  
agree to  
pay the

**III.** In case the rateable value of any hereditament  
does not exceed £20, if the hereditament is situate in

the metropolis, or £18 if situate in any parish wholly **Chap. XVII.**  
 or partly within the borough of Liverpool, or £10 if rate, and  
 situate in any parish wholly or partly within the city of be allowed  
 Manchester or the borough of Birmingham, or £8 if a commis-  
 situate elsewhere, and the owner of such hereditament sion.  
 is willing to enter into an agreement in writing with  
 the overseers to become liable to them for the poor  
 rates assessed in respect of such hereditament, for any  
 term not being less than one year from the date of such  
 agreement, and to pay the poor rates whether the here-  
 ditament is occupied or not, the overseers may, subject  
 nevertheless to the control of the vestry, agree with the  
 owner to receive the rates from him, and to allow to  
 him a commission not exceeding 25 per cent. on the  
 amount thereof.

IV. The vestry of any parish may from time to time Vestries  
 order that the owners of all rateable hereditaments to may order  
 which sect. 3 of this Act extends, situate within such the owner  
 parish, shall be rated to the poor rate in respect of such to be rated  
 rateable hereditaments, instead of the occupiers, on all instead  
 rates made after the date of such order; and thereupon of the occu-  
 and so long as such order shall be in force the follow- pier.  
 ing enactments shall have effect:

1. The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of 15 per centum from the amount of the rate:
2. If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect of all such rateable hereditaments of which he is the owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow to him a further abatement or deduction not exceeding 15 per centum from the amount of the rate during the time he is so rated:

**Part IV.**

8. The vestry may by resolution rescind any such order after a day to be fixed by them, such day being not less than 6 months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect:

Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling-house shall not be included.

Owners  
omitting to  
pay rates  
before the  
5th day of  
June to  
forfeit com-  
mission.

V. When an owner who has become liable to pay the poor rate omits or neglects to pay, before the 5th day of June in any year, any rate or any instalment thereof which has become due previously to the preceding 5th day of January, and has been duly demanded by a demand-note delivered to him or left at his usual or last known place of abode, he shall not be entitled to deduct or receive any commission, abatement, or allowance to which he would, except for such omission or neglect, be entitled under this Act, but shall be liable to pay, and shall pay, such rate or instalment in full.

Repeal of  
13 & 14  
Vict. c. 99,  
&c., so far  
as the same  
apply to  
the poor  
rate.

VI. The statute 13 & 14 Vict. c. 99, with respect to the rating of small tenements, and so much of any local statute as relates to the rating of owners instead of occupiers, are hereby repealed, so far as the same apply to any poor rate (a) made after this Act comes into operation.

Constructive  
payment  
of the rate.

VII. Every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent as herein provided, and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with

---

(a) This Act, 13 & 14 Vict. c. 99, is wholly repealed by Statute Law Revision Act, 1875. It is contemplated that highway rates shall, as regards the assessing of owners and the power to compound, be placed on the same footing as poor rates.

the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which as regards rating depends upon the payment of the poor rate. Chap. XVII.

VIII. Where an owner who has undertaken, whether by agreement with the occupier or with the overseers, to pay the poor rates, or has otherwise become liable to pay the same, omits or neglects to pay any such rate, the occupier may pay the same and deduct the amount from the rent due or accruing due to the owner, and the receipt for such rate shall be a valid discharge of the rent to the extent of the rate so paid. Where owners omit to pay rates, the occupiers paying the same may deduct the amount from the rent.

IX. Every owner who agrees with the overseers to pay the poor rate, or who is rated or liable to be rated for any hereditament instead of the occupier, shall deliver to the overseers, from time to time, when required by them, in writing, a list containing the names of the actual occupiers of the hereditaments comprised in such agreement, or for which he is so rated or liable to be rated; and if any such owner wilfully omits to deliver such list when required to do so, or wilfully omits therefrom or misstates therein the name of any occupier, he shall for every such omission or misstatement be liable, on summary conviction, to a penalty not exceeding £2. Owners to give lists of occupiers, and liable to penalty for wilful omission.

X. Section 28 of "The Representation of the People Act, 1867," with respect to notice to be given of rates in arrear, shall apply to occupiers of premises capable of conferring the parliamentary franchise, although the owners of such premises have become liable for the rates assessed thereon under the provisions of this Act. Notice to occupiers of rates in arrear.

**Part IV.**

**Liability  
of owner  
under  
agreement.**

**XI.** Where the owner has become liable to the payment of the poor rates, the rates due from him together with the costs and charges of levying and recovering the same, may be levied on the goods of the owner, and be recovered from him in the same way as poor rates may be recovered from the occupier.

**Recovery of  
rates unpaid  
by the owner.**

**XII.** Notwithstanding the owner of any such rateable hereditament as aforesaid has become liable for payment of the poor rates assessed thereon, the goods and chattels of the occupier shall be liable to be distrained and sold for payment of such rates as may accrue during his occupation of the premises, at any time whilst such rates remain unpaid by the owner, subject to the following provisions :

1. That no such distress shall be levied unless the rate has been demanded in writing by the overseers from the occupier, and the occupier has failed to pay the same within 14 days after the service of such demand :
2. That no greater sum shall be raised by such distress than shall at the time of making the same be actually due from the occupier for rent of the premises on which the distress is made :
3. That any such occupier shall be entitled to deduct the amount of rates for which such distraint is made, and the expense of distraint, from the rent due or accruing due to the owner, and every such payment shall be a valid discharge of the rent to the extent of the rate and expenses paid.

**Owner may  
appeal  
against  
valuation list  
and rate.**

**XIII.** Every owner of any hereditament for the rates of which he has become liable shall have the same right of appeal (subject to the same conditions and consequences) against the valuation lists and poor rates as if he were the occupier thereof.

XIV. The overseers of every parish when they make Chap. XVII.  
 a poor rate shall set forth in the title of the rate the The over-  
 seer to state  
 the period  
 for which  
 poor rate  
 is made.  
 period for which the same is estimated, and if the same  
 is payable by instalments the amount of each instalment  
 and the date at which each instalment is payable; pro-  
 vided that if the necessities of the parish shall require Proviso.  
 it, another rate may be made before such period shall  
 have elapsed.

XV. The overseers who make the poor rate for a Overseers  
 may make  
 poor rate  
 payable by  
 instalments.  
 period exceeding three months may declare that the same  
 shall be paid by instalments at such times as they shall  
 specify, and thereupon each instalment only shall be en-  
 forceable as and when it falls due, and the payment of  
 any such instalment shall, as respects any qualification  
 or franchise depending upon the payment of the poor  
 rate, be deemed a payment of such rate in respect of the  
 period to which such instalment applies.

XVI. If the occupier assessed in the rate when made Provision for  
 successive  
 occupiers,  
 and for occu-  
 piers coming  
 into unoccu-  
 pied here-  
 ditaments.  
 shall cease to occupy before the rate shall have been  
 wholly discharged, or if the hereditament being unoc-  
 cupied at the time of the making of the rate become  
 occupied during the period for which the rate is made,  
 the overseers shall enter in the rate book the name of  
 the person who succeeds or comes into the occupation, as  
 the case may be, and the date when such occupation  
 commences, so far as the same shall be known to them,  
 and such occupier shall thenceforth be deemed to have  
 been actually rated from the date so entered by the over-  
 seer, and shall be liable to pay so much of the rate as  
 shall be proportionate to the time between the commence-  
 ment of his occupation and the expiration of the period  
 for which the rate was made, in like manner and with  
 the like remedy of appeal, as if he had been rated when  
 the rate was made; and an outgoing occupier shall  
 remain liable in like manner for so much and no more  
 of the rate as is proportionate to the time of his occu-

**Part IV.**      pation within the period for which the rate was made; and the twelfth section of the statute 17 Geo. 2, c. 38, shall be repealed.

When the poor rate shall be deemed to be made.

XVII. A poor rate shall be deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance then on the day of the last allowance.

Evidence of making and publication of rates.

XVIII. The production of the book purporting to contain a poor rate, with the allowance of the rate by the justices, shall, if the rate is made in the form prescribed by law, be *prima facie* evidence of the due making and publication of such rate (a).

Overseers to insert names of all occupiers in the rate.

XIX. The overseers in making out the poor rate shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers' column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid; and if any overseer negligently or wilfully and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, such overseer shall for every such omission or misstatement be liable on summary conviction to a penalty not exceeding £2; provided that any occupier whose name has been omitted shall, notwithstanding such omission and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted.

Penalty for omission.

Saving of franchises.

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(a) When proceedings are taken before justices for the non-payment of a highway rate, the mere production of the book purporting to contain the rate is no evidence of the due publication of such rate. *Bird v. Adcock*, 47 L. J. M. C. 123.

XX. The word "overseer" shall include every authority that makes an assessment for the poor rate; the words "poor rate" shall mean the assessment for the relief of the poor, and for the other purposes chargeable thereon according to law, and in the metropolis shall extend to every rate made by the overseers, and chargeable upon the same property as the poor rate; the word "owner" shall mean any person receiving or claiming the rent of the hereditament for his own use, or receiving the same for the use of any corporation aggregate, or of any public company, or of any landlord or lessee who shall be a minor, a married woman, or insane, or for the use of any person for whom he is acting as agent; the word "parish" shall signify every place for which a separate overseer can be appointed; the word "vestry" shall include not only the vestry of a parish existing under the authority of some general or special Act of parliament, or by special custom or otherwise, but also the meeting of the inhabitants of any township, vill, or place having a separate overseer, and for which a separate poor rate is made, held after notice given in like manner as is required by law in regard to the meetings of vestries; and the word "metropolis" shall include only the metropolis as defined by the Metropolis Management Act, 1855.

Chap. XVII.

Interpretation  
of terms.

XXI. This Act shall not extend to Scotland or to Ireland.

Application  
of Act.

XXII. This Act may be cited as "The Poor Rate Assessment and Collection Act, 1869," and shall come into operation on the 29th of September, 1869: Provided that the vestry of any parish may before that day order that the owners shall be rated instead of the occupiers under this Act, but no such order shall take effect until after the said 29th day of September, 1869.

Short title.

Commence-  
ment of Act.



Part V.

PART V.

CERTAIN ACTS RELATING TO TURN-  
PIKE ROADS.

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CHAPTER XVIII.

APPLICATION OF HIGHWAY RATES  
TO TURNPIKE ROADS.

4 & 5 VICT. CAP. 59.

*n Act to authorize for One Year, and until the end of  
the then next Session of Parliament, the Application  
of a Portion of the Highway Rates to Turnpike  
Roads, in certain Cases (a).*

[22nd June, 1841.]

WHEREAS an Act was passed, 5 & 6 Will. 4, c. 50, intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," whereby divers statutes passed in the reign of His late Majesty Geo. 3rd, relating to the performance of statute duty, were repealed, and statute duty was thereby altogether abolished: And whereas the revenues of some turnpike roads are so unequal to the charge and maintenance of such roads, after paying the interests and principal of the sums due upon mortgage of the tolls thereof, when deprived of the aid heretofore derived from statute duty, that it is necessary that some additional provision be made for such

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(a) Continued by sundry Acts, the last of which is 44 & 45 Vict. c. 70, which continues the same until 31st Dec., 1882.

roads, for a limited period: Be it therefore enacted, **Cap. XVIII.** &c., that it shall be lawful for the justices at any special sessions for the highways holden after the passing of this Act, upon information exhibited before them by the clerk or treasurer of any (b) turnpike trust, that the funds of the said trust are insufficient (c) for the repairs of the turnpike roads within any parish (d), notice in writing of such intended information having been previously given on the part of such clerk or treasurer to the parish surveyor 21 days at least before such special sessions, to examine the state of the revenues and debts of such turnpike trusts, and to inquire into the state and condition of the repairs of the roads, within the same, and also to ascertain the length of the roads, including turnpike roads within such parish, and how much of such road is turnpike road; and if after such examination it shall appear to the said justices necessary or expedient, for the purposes of any turnpike road, so to do, then to adjudge and order what portion,

Justices at special sessions for highways, on proof of the deficiency of the funds, &c., of any turnpike trust, may order payment to said trust of portion of the highway rate.

(b) The Act applies to any turnpike road, whether in existence at the passing of the Act or not. *Trustees of Sunk Island Turnpike Rd. v. Surv. of Patrington*, 31 L. J. M. C. 18. And whether the tolls are taken for the maintenance of the roads only, or for other purposes also. *Id.* And whether the whole road has been completed and opened or not. *Roberts v. Roberts*, 3 B. & S. 183. *R. v. French*, 48 L. J. M. C. 175; L. R. 4 Q. B. D. 507.

(c) By a Local Turnpike Act, 5 Vict. c. 69, s. 2, in case the trustees should keep in good repair part of a road within the parish of G. B., they were empowered to take certain specified tolls upon it. The tolls received by the trustees in respect of this portion of the road were considerably more than was sufficient to keep it in repair—*Held*, that as long as the trustees continued to take these tolls, and found them sufficient to keep such part of the road in repair, they could not, in addition to the tolls, claim to have an order made on the parish of G. B. for the payment of a further sum under 4 & 5 Vict. c. 59, s. 1, on the ground that there was a general deficiency of the funds of the whole turnpike trust. *Market Harboro and Brampton Turnpike Trust v. Market Harboro Highway Bd.*, 42 L. J. M. C. 139.

(d) By stats. 12 & 13 Vict. c. 87, s. 3, and 13 & 14 Vict. c. 79, turnpike road trustees borrowing money on security of tolls must, after paying interest, first set apart 5 per cent. as a sinking fund to pay off the debt. See *Chatham Bd. of Health v. Rochester Pave-ment Committee*, 29 J. P. 805.

**Part V.**

if any (a), of the rate or assessment levied or to be levied by virtue of the said recited Act shall be paid by the said parish surveyor, and at what time or times, to the said commissioners or trustees, or to their treasurer or other officers appointed by them on that behalf, such money to be (b) wholly laid out in the actual repairs of such part of such turnpike road as lies within the parish from which it was received (c).

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(a) By a special Turnpike Roads Act, the trustees were authorised to expend the sum of £850 upon the repair of the 35 miles of road within their trust. This sum was insufficient for the repairs, and they applied to justices to make an order upon the surveyors of highways for the parish of P., through which a portion of the road passed, for the payment of a sum of money towards the repairs of such road. They required an order for the payment of £115 8s. 6d., which sum they arrived at by apportioning the £850 according to a mileage proportion, which would give £27 4s. 8d. to P., and then deducting that sum from £142 13s. 2d., the estimated amount necessary for the repair of the road in P. The cost of repairing the road in P. was higher than the cost in other parishes, owing to the traffic being much heavier, and if the apportionment had been made after taking into consideration such additional cost, the sum apportioned to P. would have been £89—*Held*, that the mode of calculation adopted by the trustees was wrong, and that the justices were right in ordering the payment of £53 13s. 2d., the difference between the above sum of £89 and the estimated cost of the repairs for the year in P. *Trustees of Brighton Turnpike Trust v. Surveyors of Parish of Preston*, 39 L. J. M. C. 33.

(b) The justices can only, after examination or inquiry into the state of the road, order prospectively repairs to be done, and cannot retrospectively order payment of expenses already incurred in repair. *Brown v. Evans*, 29 J. P. 341.

(c) Shortly after the passing of H. Act, 1862, it was discovered that an omission had been made in respect of the contributions to be made by parishes towards the repair of turnpike roads. Under H. Act, 1835, the surveyor of highways is empowered to levy a highway rate; and by 4 & 5 Vict. c. 59, s. 1, justices are enabled, on application made to them by the clerk or treasurer of any turnpike road, to make an order on the parish surveyor for the payment to the trustees of the turnpike road of a portion of the rate levied by virtue of the above Act. But, by H. Act, 1862, s. 11, where a parish forms part of a highway district, the powers, duties, &c., of the surveyor are vested in the highway board, and by sect. 21, the funds for the repairs of the highways are to be derived from the rates levied for the relief of the poor; and, except under certain circumstances, no highway rate is to be levied by virtue of

II. And be it enacted, that if any such parish surveyor shall refuse or neglect to pay over such portion of the said rate or assessment at the time or times and in the manner mentioned in the order of the said justices, the same shall and may be levied upon the goods and chattels of such surveyor in such manner as penalties and forfeitures are by the said recited Act authorized to be levied.

Cap. XVIII.

Parish surveyor neglecting to pay such portion of rate, it may be levied by distress.

III. Provided always, and be it enacted, that if any person shall think himself aggrieved by any order, judgment, or determination made, or by any matter or thing done by any justices of the peace at any such special sessions, in pursuance of this Act, such person shall be at liberty to make his complaint thereof by appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, riding, division, or place wherein the cause of such complaint shall arise, such appellant first giving to such justices 10 days' notice in writing of the grounds of such appeal, within 6 days after such order, judgment, or determination shall be so made or given as aforesaid, who are hereby required, within 48 hours after the receipt of such notice, to return all proceedings whatever had before them respectively touching the matter of such appeal to the said justices at the general or quarter sessions aforesaid; and that in case of such appeal the said justices at the said quarter sessions, upon due proof of such notice and statement having been given as aforesaid, shall hear and determine such appeal; and the said justices at the said quarter sessions shall have power to award such costs to the parties appealing or appealed against as they the said justices shall think proper, such costs to be levied and recovered in the same

Power of appeal to justices at quarter sessions.

H. Act, 1835, s. 27. To meet this difficulty the statute 26 & 27 Vict. c. 94, has been passed, which will be found immediately following this Act. See 27 J. P. 465.

- Part V.** manner as any penalties or forfeitures are recoverable under the said recited Act; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form: provided always, that in case there shall not be time to give such notice as aforesaid before the next sessions to be holden after such order, determination, or judgment, then and in every such case such appeal may be made to the justices at the next following sessions, who shall proceed to determine such appeal in manner aforesaid: provided always, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statements as aforesaid.
- Interpretation clause.** IV. And be it enacted, that in construing this Act the word "parish" shall be taken to mean and include parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry, or other place or district maintaining its own highways.
- Extent of Act.** V. And be it enacted, that this Act shall extend only to England.
- Duration of Act.** VI. And be it enacted, that this Act shall continue and be in force for one year from the passing thereof, and from thence until the end of the then next session of parliament (a).
- Amendment of Act.** VII. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of parliament.

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(a) See note, *ante*, p. 336.

*An Act to amend the Law relating to the Repair of Turnpike Roads in England, and to continue certain Turnpike Acts in Great Britain.*

[28th July, 1863.]

I. Whereas doubts are entertained whether highway boards established under the H. Act, 1862, are liable to contribute to the repair of turnpike roads in pursuance of the 4 & 5 Vict. c. 59, (*ante*, p. 336), and the Acts continuing the same: Be it enacted, that where any turnpike road is situate in a parish that is included in a highway district, an order may be made on the highway board of the district to contribute to the repair of that road under the same circumstances under which an order for the same purpose may be made on the parish surveyor in pursuance of the said Act, 4 & 5 Vict. c. 59, as continued as aforesaid; and for the purposes of the said last-mentioned Act, the highway board shall be deemed to be substituted for the parish surveyor, and any rate leviable in pursuance of a precept of the board for the rate or assessment levied or to be levied by the said surveyor as in the said Act mentioned, and any monies paid by the board for the purposes or in pursuance of the last-mentioned Act, shall be deemed to be expenses incurred by the board in respect of the repair of highways in the parish in which the turnpike road is situate for which contribution is required (*b*), and "parish," as used in this

For removing doubts as to highway boards established under 25 & 26 Vict. c. 61, being liable to contribute to repair of turnpike roads in pursuance of 4 & 5 Vict. c. 59, &c.

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(*b*) By 34 & 35 Vict. c. 115, s. 15, when, in accordance with the provisions of the above Act, "an order has been made on the highway board of a district to contribute to the repair of a turnpike road, any monies paid by the board in pursuance of such order shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly to the district fund. So much of the said Act as prescribes that such monies shall be deemed expenses incurred by the board in respect of the repair of the highways in the parish in which the turnpike road is situated for which such contribution is required is hereby repealed."

**Part V.** section, shall mean any place in a highway district that returns a waywarden or waywardens to the board of that district; and it is hereby declared, that "local Act," as used in the 7th section of the H. Act, 1862, does not include Turnpike Acts.

As to term  
"local Act."

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By 35 & 36 Vict. c. 85, s. 14, a highway board may, if they think fit, either repair or contribute to the repair of a turnpike road within their district, notwithstanding that no order of contribution may have been made upon the board, in pursuance of the 1st section of the Annual Turnpike Acts Continuance Act, 1863; and all monies so expended by the board shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district; and shall be charged accordingly on the district fund; and this section shall be deemed to take effect from the 1st of January, 1872.

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## CHAPTER XIX.

Chap. XIX.

### DISTURNPIKED ROADS.

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#### THE ANNUAL TURNPIKE ACTS CONTINUANCE ACT, 1865.

28 & 29 VICT. CAP. 107.

II. 3 Geo. 4, c. 126, ss. 118, 124 (a) . . . shall continue in force in relation to any road which, having been a turnpike road, may at any time after the passing of this Act become an ordinary highway, in the same manner as if such road had continued to be a turnpike road; and in the construction of the said\* section the highway board shall be deemed to be the trustees or commissioners where the road is within the jurisdiction of a highway board, and in other cases the surveyor or other local authority having the care of the road shall be deemed to be such trustees or commissioners.

Encroach-  
ments on  
highways.

\* Sic.

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30 & 31 VICT. CAP. 121.

#### THE ANNUAL TURNPIKE ACTS CONTINUANCE ACT, 1867.

V. Where the repairs of a turnpike road shall be thrown wholly or partly on a parish, any ratepayer of that parish shall, on payment of 1s. to the clerk of the trust, and on any day within 21 days of the general annual meeting of the commissioners of such trust, have access between the hours of 10 o'clock in the morning and 2 o'clock in the afternoon, to the accounts

Inspection of  
accounts of  
trust in  
certain cases.

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(a) These sections refer to encroachments, &c., on roads.



**Part V.** of such trust, and shall be empowered to examine and take a copy of the accounts.

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33 & 34 VICT. CAP. 73.

THE ANNUAL TURNPIKE ACTS CONTINUANCE  
ACT, 1870.

Repairs of  
certain roads  
which have  
ceased to be  
turnpike  
roads.

X (a). With regard to any highway which within 7 years previous to the passing of this Act has ceased or which hereafter may cease to be a turnpike road, the cost of maintaining so much thereof as passes through any highway district constituted under the Highway Acts, 1862 and 1864, shall after the 31st day of December, 1870, or after the date of the said highway ceasing to be a turnpike road, whichever shall last happen, be a charge on the common fund of such highway district, and shall be annually provided for in the same manner as is enacted in the 32nd section of the H. Act, 1864, (*ante*, p. 237), in respect to the salaries of the officers appointed for the district. (See H. Act, 1878, s. 13, *ante*, p. 266.)

As to getting stone, &c., for repair of turnpike roads thrown on a highway district by the preceding clause, see sect. 11 of above Act; and as to the repair of bridges previously repaired by trustees of turnpike road, see sect. 12.

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34 & 35 VICT. CAP. 115.

THE ANNUAL TURNPIKE ACTS CONTINUANCE  
ACT, 1871.

Section 15, *ante*, p. 341 n.

Sale of  
toll-houses.

Section 17 relates to the sale of toll-houses where turnpike trust about to expire.

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(a) See H. Act, 1878, s. 13, *ante*, p. 266.

THE ANNUAL TURNPIKES CONTINUANCE ACT,  
1872.

Section 14 (*ante*, p. 342 *n.*).

XV. For the purpose of facilitating the abolition of tolls on any turnpike road within or passing through a highway district, the highway board and the trustees of the turnpike road may mutually agree that the highway board shall take upon themselves the maintenance and repair of such turnpike road, or so much thereof as is within their district, and thereupon the highway board shall pay off and discharge, where the turnpike is wholly within the highway district, the debt that may remain and be subsisting on the trusts of such turnpike road, or such sum by way of composition, but in full discharge of such debt, as the Local Government Board may after inquiry determine, and where the turnpike is not wholly within such district, such sum as the Local Government Board may in like manner determine as an equitable proportion of such debt or composition for the same.

Highway board may agree to repair roads within turnpike trust.

The abolition of such tolls shall be deemed to be an improvement of highways within the meaning of sections 47, 48, and 50 of "The H. Act, 1864," (*ante* pp. 248—251), and for such purpose the highway board may borrow money in accordance with the provisions of those sections subject to the following provisions, viz.: That the improvements shall be deemed to be on behalf of all the parishes within the district, and each parish shall contribute thereto in the same proportion as it contributes to the district fund.

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Part. V.

36 &amp; 37 VICT. CAP. 90.

THE ANNUAL TURNPIKE ACTS CONTINUANCE  
ACT, 1873.

Highway  
board may  
abolish tolls.

XV. If any highway board or other local authority shall be desirous of taking upon themselves the maintenance and repair of the roads of any turnpike trust within or passing through their district, such highway board or other local authority may, if not less than one-half in length of such road is within the district, apply to the Local Government Board to determine the value of the existing debt (a) and other liabilities of such turnpike trust, and the Local Government Board may, by order made after such inquiry and the publication of such notice as they may think sufficient, determine the value of such debt and liabilities;

And the trustees and other persons interested in such debt and liabilities shall accept a sum equivalent to the value so determined as a full and complete discharge of such debt and liabilities; and from and after a day to be fixed by the said Local Government Board, no tolls shall be levied on the roads theretofore included within the district of such turnpike trust; and in case the said turnpike trust shall extend beyond the district of the highway board or local authority making the application as aforesaid, it shall be lawful for the said Local Government Board to apportion the value of the debts and liabilities of such turnpike trust, so deter-

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(a) By 37 & 38 Vict. c. 95, s. 11, where the local government board, in exercise of the discretionary power conferred upon them by the above section, make an order determining the value of the existing debt and liabilities of a turnpike trust, the board may by the same order declare to whom and in respect of what claim or claims the whole or any part of the value of such debt and liabilities is to be paid. The term "existing debt and other liabilities" used in the above 15th section means the bonded or mortgage debt of a turnpike trust, and any unpaid interest thereon.

mined as aforesaid, between the several local authorities through whose districts the roads of such turnpike trust extend, and each such local authority shall raise and pay to the trustees the amount apportioned to such authority. Chap. XIX.

Provided that an order made under this section shall not take effect until the expiration of one calendar month after the same has been published in the *London Gazette* and some local newspaper circulating in the locality of the turnpike trust affected thereby; and if two-thirds in number and value of the creditors of the trust shall give notice in writing to the Local Government Board, before such order takes effect, that they object to the same, the order shall be provisional only, and shall not come into operation until it has been confirmed by parliament.

XVI. The abolition of the tolls on a turnpike road in consequence of any such order as aforesaid, shall in the case of a highway district be deemed to be an improvement of highways within the meaning of sections 47, 48, and 50 of "The H. Act, 1864," (*ante*, pp. 248—251), and for such purpose the highway board may borrow money in accordance with the provisions of those sections, subject to the following provisions, viz.: That the improvement shall be deemed to be on behalf of all the parishes within the district, and each parish shall contribute thereto in the same proportion as it contributes to the district fund. Money may be borrowed for abolition of tolls.

See further as to disturnpiked roads H. Act, 1878, s. 13, &c., *ante*, p. 266.

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**Part VI.**

**PART VI.**

**ACTS RELATING TO RAILWAYS.**

**CHAPTER XX.**

**RAILWAY CROSSINGS.**

**2 & 3 VICT. CAP. 45.**

*An Act to amend an Act of the 5th and 6th Years of the Reign of His late Majesty King William the 4th relating to the Highways.*

[17th August, 1839.]

*(Railway Crossings. 1.)*

Proprietors  
of railroad  
to maintain  
gates where  
any railroad  
crosses the  
highway, &c.

WHENEVER a railroad crosses or shall hereafter cross any turnpike road or any highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the company of proprietors of the said railroad shall make and maintain good and sufficient gates across each end of such turnpike or other road as aforesaid at each of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad (a); and any complaint for any neglect in respect of the said gates shall be made within one calendar month after the said neglect to any justice of the peace, or if in Scotland to the sheriff of the county, who may summon the party so complained against to appear before them or him at the next petty session or court to be holden

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(a) See also 5 & 6 Vict. c. 55, s. 9, *post*, p. 349.

for the district or division within which such gates are situate, who shall hear and decide upon the said complaint; and the proprietor or director so offending shall for each and every day of such neglect forfeit any sum not exceeding £5, together with such costs as to the justices or sheriff depute aforesaid before whom the conviction shall take place shall seem fit.

Chap. XX.

Penalty £5  
for each day's  
neglect.

II. And be it further enacted, that the penalties by this Act imposed, and the costs to be allowed and ordered by the authority of this Act, shall in England be recovered and applied in the same manner as any penalties and costs under the said Act, and in Scotland shall be recovered and applied to the maintenance of the statute labour roads within the district where the offence is committed.

How penalties shall be recovered and applied.

By section 3 the Act commenced from the 30th day of September, 1839 (b).

Commencement of Act.

# 5 & 6 VICT. CAP. 55.

## *An Act for the better Regulation of Railways, &c.*

[30th July, 1842.]

### *(Railway Crossings. 2.)*

IX. "And whereas by an Act 2 & 3 Vict. c. 45, (*ante*, p. 348), it was enacted, that whenever a railway crosses, or shall hereafter cross, any turnpike road, or any other highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the said railway shall make and maintain good and sufficient gates across each end of such turnpike or other road, at each end of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or other road shall not be

Gates at level crossings to be kept closed across the road, 2 & 3 Vict. c. 45.

(b) Repealed by Statute Law Rev. Act, 1874, No. 2.

**Part VI.** exposed to any danger or damage by the passing of any carriages or engines along the said railway.

“And whereas by the Acts relating to certain railways, it is provided that such gates shall be kept constantly closed across the railway, except during the time when carriages or engines passing along the railway shall have to cross such turnpike or other road;” and whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway, be it therefore enacted, that notwithstanding anything to the contrary contained in any Act of Parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road shall have to cross such railway; and such gates shall be of such dimensions, and so constructed as, when closed across the ends of such turnpike or other roads, to fence in the railway and prevent cattle or horses passing along the road from entering upon the railway while the gates are closed: provided always, that it shall be lawful for the lords of the committee (of H. M.’s privy council for trade) in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed, instead of across the road (a); and such order of the lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company, to whom such order is addressed, for keeping such gates closed in the manner directed by the lords of the said committee.

Proviso.

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(a) These provisions are re-enacted by Railway Consolidation Act, 8 & 9 Vict. c. 20, s. 47, *post*, with the addition of a penalty of 40s. upon the person in charge of the gate for not closing it as soon as horses or carriages have passed through.

RAILWAY CLAUSES CONSOLIDATION  
ACT.  

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8 &amp; 9 VICT. CAP. 20.

XI. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by parliament, and as marked on the same, to any extent exceeding in any place 5 feet, or, in passing through a town, village, street, or land continuously built upon, 2 feet, without the previous consent in writing of the owners and occupiers of the and in which such deviation is intended to be made; or in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or, if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gas works or waterworks affected by such deviation: provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by Act of Parliament be left for



**Part VI.**

roads, streets, or canals passing under the same: provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, 14 days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

What works  
railway com-  
pany may  
make.

XVI. Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway or the accommodation works connected therewith, hereinafter mentioned, to execute any of the following works, that is to say, (*inter alia*)—

They may make or construct in, upon, across, under, or over any lands, or any . . . roads, railroads, or tramroads . . . described in the plans, or mentioned in the books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences as they think proper.

They may . . . direct or alter, as well temporarily as permanently, the course of any such . . . roads, streets, or ways, or raise or sink the levels of any such . . . roads, streets, or ways, in order the more conveniently (a) to carry the same over or under

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(a) "Conveniently" means conveniently, both for the company and the public. *R. v. Sharpe*, 3 Railway Cases, 38. *Edwards v. Great Junction Ry. Co.*, 1 Railway Cases, 173. The company have no power under this section to divert a road merely to avoid the expense of crossing over or under it by means of a bridge. *E. v. Wycombe Ry. Co.*, 31 J. P. 197; 36 L. J. Q. B. 121; L. R. 2 C.P. 310; but where they have *bond fide*, though acting *ultra vires*

or by the side of the railway, as they may think Chap. XXI.  
proper. . . .

They may from time to time alter, repair, or discontinue the before mentioned works or any of them, and substitute others in their stead; and

They may do all other acts necessary for making, maintaining, altering, or repairing and using the railway.

Provided always, that in the exercise of the powers by this or the special Act granted, the company shall do as little damage as can be, and shall make full satisfaction in manner herein, and in the special Act, and any Act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers.

*And with respect to the crossing of roads, or other interference therewith, be it enacted as follows:*

**XLVI.** If the line of the railway cross any turnpike road or public highway, then (except where otherwise Crossing of roads (b).

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diverted a road with a view to the public convenience, a court of equity will not compel them to construct a road *intra vires*, if the result would be a great inconvenience to the public. *Att.-Gen. v. Ely, &c., Ry. Co.*, 38 L. J. Ch. 258; 32 J. P. 644.

(b) Where the railway crosses a highway, not on a level, and the special Act is silent on the subject, the company have an option to carry the road over the railway, or the railway over the road. *R. v. South E. Ry. Co.*, 17 Q. B. 485; 20 L. J. Q. B. 428; 4 H. L. Cases, 471. Where a highway is carried over the railway by means of a bridge, the company is liable perpetually to repair the bridge itself, and over the ascent and descent. *N. S. Ry. Co. v. Dale*, 27 L. J. 147; 1 E. & B. 836. *Leech v. N. S. Ry. Co.*, 29 L. J. 150. But where the highway is lowered for the purpose of carrying the railway over it by means of a bridge, the company is not bound to repair the highway under the bridge: the repair of such highway being still thrown on the parish. *L. and N. W. Ry. Co. v. Skerton (Surveyor of)*, 33 L. J. M. C. 158; 10 L. T. 648. See *R. v. L. and Birm. Ry. Co.*, 1 Railway Cases, 317. *R. v. Rigby*, 6 Railway Cases, 488. *R. v. Manchester and Leeds Ry. Co.*, 3 Q. B. 528.

Part VI.

provided by the special Act) (a) either such road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge, of the height and width and with the ascent or descent by this or the special Act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company: provided always that, with the consent of two or more justices in petty sessions, as after mentioned (b), it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level.

Provision in cases where roads are crossed on a level.

XLVII. If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates (c); and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway; and the person entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of 40s. for every default therein: provided always, that it

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(a) See *Warden, &c., of Dover Harbour v. London, Chatham, and Dover Ry. Co.*, 30 L. J. Ch. 474.

(b) Sect. 59, *post*, p. 362.

(c) See 5 & 6 Vict. c. 55, s. 9, *ante*, p. 349. *Ellis v. L. and S. W. Ry.*, 26 L. J. Ex. 349; 2 H. & N. 424. *N. E. Ry. Co. v. Wanstless*, 43 L. J. Q. B. 185.

shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road (*d*). Chap. XXI.

XLVIII. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than 4 miles an hour; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade. As to crossing of turnpike roads adjoining stations.

XLIX. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where Construction of bridges over roads.

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(*d*) As to the liability of the company for injuries sustained by crossing the railway on a level, see *ante*, p. 60, and *Stubley v. London and North W. Ry. Co.*, 29 J. P. 808. *Williams v. Great W. Ry. Co.*, 43 L. J. Ex. 105; *Ellis v. Great W. Ry. Co.*, 43 L. J. C. P. 304. *Bilbes v. London, B., and S. C. Ry. Co.*, 18 C. B. (n.s.) 584. *Stapley v. London, B., and S. C. Ry. Co.*, 29 J. P. 824. *Lunt v. London and N. W. Ry. Co.*, 30 J. P. 327. *Walker v. Mid. Ry. Co.*, 30 J. P. 535. *R. v. London and B. Ry.*, 1 Railway Cases, 317. Where a railway, under the powers of an Act of parliament, crosses a highway on the level, it is the duty of the company to keep the part of the way used by the public in a state of repair suitable for the ordinary and regular traffic. *Oliver v. N. E. Ry. Co.*, 43 L. J. Q. B. 198. Perhaps this section virtually prohibits the public from opening the gates, or passing across the railway, except at a time when the gates are opened by the person in charge. *Wyatt v. Great W. Ry. Co.*, 34 L. J. Q. B. 204; 6 B. & S. 709.

**Part VI.** otherwise provided by the special Act) be built in conformity with the following regulations; (that is to say,)

The width of the arch shall be such as to leave thereunder a clear space of not less than 35 feet if the arch be over a turnpike road, and of 25 feet if over a public carriage road, and of 12 feet if over a private road (*a*).

The clear height of the arch from the surface of the road shall not be less than 16 feet for a space of 12 feet if the arch be over a turnpike road, and 15 feet for a space of 10 feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than 12 feet:

The clear height of the arch for a space of 9 feet shall not be less than 14 feet over a private carriage road:

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in 30 feet if the bridge be over a turnpike road, one foot in 20 feet (*b*) if over a public carriage road, and one foot in 16 feet if over a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

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(*a*) See section 51, *post*, p. 357. These dimensions are to be taken irrespective of the footpaths at the sides of the roads. *R. v. Rigby*, 19 L. J. Q. B. 153; 14 Q. B. 687.

(*b*) Where a local Act stipulated that the slope should not be less than 1 in 30, and the company were unable to comply with those terms, in consequence of an injunction which restrained them from extending their embankment, the Court of Chancery refused to relieve them by dismissing the injunction, and said they must make terms with the person obtaining it if they could, but if not, the railway must be stopped. *Att.-Gen. v. Mid-Kent Ry. Co.*, 32 J. P. 244.

L. Every bridge (c) erected for carrying any road over the railway shall (except as otherwise provided by the special Act) be built in conformity with the following regulations, (that is to say) :—

Chap. XXI.  
Construction  
of bridge  
over railway.

There shall be a good and sufficient fence on each side of the bridge of not less height than 4 feet, and on each side of the immediate approaches of such bridge of not less than 3 feet :

The road over the bridge shall have a clear space between the fences thereof, of 35 feet if the road be a turnpike road, and 25 feet if a public carriage road, and 12 feet if a private road :

The ascent shall not be more than one foot in 30 feet if the road be a turnpike road, one foot in 20 feet if a public carriage road, and one foot in 16 feet if a private carriage road, not being a tram-road or railroad, or if the same be a tramroad or railroad the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

LI. Provided always, that in all cases where the average available width for the passage of carriages of any existing roads within 50 yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width, in the case of a turnpike road or public carriage road, than 20 feet : Provided also, that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of

The width of  
the bridges  
need not ex-  
ceed the width  
of the road  
in certain  
cases.

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(c) See *R. v. L. and Birmingham Ry. Co.*, 1 Railway Cases, 317. *R. v. Birmingham and Gloucester Ry. Co.*, 2 Q. B. 47, 2 Railway Cases, 694. *Gr. N. of E. Ry. Co. v. Clarence Ry. Co.*, 3 Railway Cases, 605.

**Part VI.** such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road not exceeding the width of such road as so widened, or the maximum width herein or in the special Act prescribed for a bridge in the like case over or under the railway.

Existing inclinations of roads crossed or diverted need not be improved (a).

**LII.** Provided also, That if the mesne inclination of any road within 250 yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Before roads interfered with others to be substituted (b).

**LIII.** If, in the exercise of the powers by this or the special Act granted, it be found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tramroad, or railway,

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(a) See *Att.-Gen. v. L. and Southampton Ry. Co.*, 1 Railway Cases, 283.

(b) This section applies only to a temporary interference with roads during the process of the construction of a railway. See *Tanner v. South Wales Ry. Co.*, 5 E. & B. 618; 25 L. J. Q. B. 7. *L. and Br. Ry. Co. v. Blake*, 2 Railway Cases, 322. *R. v. Scott*, 3 Q. B. 543. *R. v. G. N. of E. Ry. Co.*, 9 Q. B. 315. *R. v. Sharp*, 3 Railway Cases, 33. *R. v. B. and G. Ry. Co.* 2 Q. B. 47.

Where, in a flat country, the company have no power under their Act to cross a road on a level, they may divert the road by carrying it, parallel to the railway, to a place where they have authority to cross on a level, though the public are obliged to go 130 yards further than before; it being held that they had complied with this and other sections of the Act by substituting, for the road interfered with, a road as convenient or as nearly so

either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be. Chap. XXI.

LIV. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit £20 for every day during which such substituted road shall not be made after the existing road shall have been interrupted: and such penalty shall be paid to the trustees, commissioners, surveyor, or other person having the management of such road, if a public road, and shall be applied for the purposes thereof, or in case of a private road the same shall be paid to the owner thereof, and every such penalty shall be recoverable with costs by action in any of the superior courts. Penalty for not substituting a road.

LV. If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such (c) party to recover the amount of such special damage from the company with costs, by action on the case in any of the superior courts, and that whether Party suffering damage from interruption of road to recover in an action on the case.

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might be. *Att.-Gen. v. Ely, &c. Ry. Co.*, 38 L. J. Ch. 258, L. R. 4 Ch. 194. *Att.-Gen. v. G. N. Ry. Co.*, 4 De Gex & S. 78. *R. v. Wycombe Ry. Co.* 36 L. J. Q. B. 121. *Raphael v. Thames Valley Ry. Co.*, L. R. 2 Ch. App. 147.

(c) See *Watkins v. Gt. N. Ry. Co.*, 16 Q. B. 961; 20 L. J. Q. B. 391.



**Part VI.** any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

Period for restoration of roads interfered with.

LVI. If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as may be; and if such road cannot be restored compatibly with the formation and use of the railway the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient (a) as the former road, or as near thereto as circumstances will allow; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following period after the first operation on the former road shall have been commenced, unless the trustees or parties having the management of the road to be restored by writing under their hands, consent to an extension of the period, and in such case within such extended period; (that is to say,) if the road be a turnpike road, within 6 months, and if the road be not a turnpike road within 12 months.

Penalty for failing to restore road.

LVII. If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special Act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company, if a public road, or if a private road to the owner (b)

(a) See *B. and G. Railway Co.*, 2 Q. B. 47. *Att.-Gen. v. L. and S. W. Ry. Co.*, 3 De Gex & S. 439.

(b) See *Collinson v. Newcastle and Darlington Ry. Co.*, 1 C. & M. 546.

thereof, £5 for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

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LVIII. If in the course of making the railway, the company shall use or interfere with (c) any road, they shall from time to time make good all damage done by them to such road; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices; and such justices may direct such repairs (d) to be made in the state of such road, in respect of the damage done by the company, and within such period as they think reasonable, and may impose on the company, for not carrying into effect such repairs, any penalty not exceeding £5 per day as to such justices (e) shall seem just; and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof: Provided always, that in determining any such question with regard to a turnpike road the said justices shall have regard to and shall make full allowance for any tolls

Company to  
repair roads  
used by them.

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(c) See *West Riding and Grimsby Ry. Co. v. Wakefield Local Bd. of H.*, 33 L. J. M. C. 174.

(d) It is not necessary that this order should specify the particulars of the damage done to the road or of the repairs required; it is sufficient if it describe the road by name and length, finding that the company have done damage, and order them to make good that damage. *L. and N. W. Ry. Co. v. Wetherall*, 20 L. J. Q. B. 337. See *ex p. Exeter Road Trustees*, 16 Jur. 669.

(e) The same two justices who have made the order to repair, are the proper parties to impose a penalty for not obeying it. *R. v. Rawson*, 31 J. P. 564.

**Part VI.** that may have been paid by the company on such road in the course of the using thereof.

Proceedings on application to justices to consent to level crossings of bridleways and footways.

**LIX.** When the company shall intend to apply for the consent of two justices, as hereinbefore (a) provided, so as to authorize them to carry the railway across any highway, other than a public carriage road, on the level, they shall, 14 days at least previous to the holding of the petty sessions at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or if there be no such church some other place to which notices are usually affixed; and if it appear to any two or more justices acting for the district in which such highway at the proposed crossing thereof is situate, and assembled in petty sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

Appeal against the determination of the justices.

**LX.** If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party, in like manner and subject to the like conditions as are hereinafter provided in the case of appeals in respect of penalties and forfeitures, to appeal to the quarter sessions of the county or place in which the cause of appeal shall have arisen; and it shall be lawful for the justices in such quarter sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway

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(a) Sect. 46. See *Dover Harbour v. London, Chatham, and Dover Ry. Co.* 30 L. J. Ch. 474.

across such highway as aforesaid, as to them shall seem fit, and to make such order concerning the costs both of the original applications and of the appeal as to them shall seem reasonable. Chap. XXI.

LXI. If the railway shall cross any highway other than a public carriageway on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway, good and sufficient gates, or stiles on each side of the railway where the highway shall communicate therewith. Company to make sufficient approaches and fences to bridleways and footways crossing on the level.

LXII. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fence, gates, and stiles as they are hereinbefore required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit £5 for every day that they fail so to do, and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred. Justices to have power to order approaches and fences to be made to highways crossing on the level.

LXIII. If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend Screen for roads to be

**Part VI.**  
made if re-  
quired by the  
board of  
trade.

danger to the passengers on such road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway, it shall be lawful for such commissioners, or trustees, or surveyor, after giving 14 days' notice to the company, to apply to the Board of Trade with respect thereto; and if it shall appear to the said board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate to be appointed by the said board.

Penalty for  
failing to  
construct.

LXIV. Where, by any such certificate as aforesaid, the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the same within the period appointed for that purpose in such certificate; and if they fail so to do they shall forfeit to the said commissioners, or trustees, or surveyor, £5 for every day during which such works shall remain uncompleted beyond the period so appointed for their completion; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Justices to  
have power  
to order  
repair of  
bridges,  
&c. (a.)

LXV. Where, under the provisions of this or the special Act, or any Act incorporated therewith the company are required to maintain or keep in repair any bridge, fence, approach, gate, or other work executed by

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(a) As to agreement with urban authority for adoption and maintenance of bridges, see Public Health Act, 1875, s. 147. *ante*, p. 306.

them, it shall be lawful for two justices on the application of the surveyor of roads, or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit £5 for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied in such manner and by such persons as they think fit in putting such work into repair (b).

Chap. XXI.

LXVI. "And whereas expense might frequently be avoided, and public convenience promoted, by a reference to the Board of Trade upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with the provisions of this or the special Act might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public:" be it enacted, that in case any difference in regard to the construction, alteration or restoration of any road or bridge, or other public work of an engineering nature required by the provisions of this or the special Act shall arise between the company and any trustees, commissioners, surveyors, or other persons having the control of or being authorized by law to enforce the construction of such road, bridge, or work, it shall be lawful for either party, after giving 14 days' notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work;

Board of Trade empowered to modify the construction of certain roads, bridges, &c., where a strict compliance with the Act is impossible or inconvenient.

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(b) See *London, Chatham, and Dover R. Co. v. Wandsworth District Board*, 42 L. J. M. C. 70

**Part V**  

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and it shall be lawful for the Board of Trade, if they shall think fit, to decide the same accordingly, and to authorize, by certificate in writing any arrangement or mode of construction in regard to any such road, bridge, or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special Act or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed shall be deemed to be constructed in conformity with the provisions of this and the special Act: Provided always, that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

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## CHAPTER XXII.

Chap. XXII.

### THE RAILWAY CLAUSES ACT, 1863.

26 & 27 VICT. CAP. 92.

V. Where the company is authorized by the special Act to carry the railway across a turnpike road or public carriage road on a level, it shall not be lawful for the company in shunting trains to pass any train over the level crossing, or at any time to allow any train, engine, carriage, or truck to stand across the same.

Trains not to be shunted over level crossings.

VI. For the greater convenience and security of the public, the company shall erect and permanently maintain a lodge at the point where the railway crosses on the level of the turnpike road or public carriage road; and the company shall be subject to and shall abide by all such regulations with regard to the crossing thereof on the level, or with regard to the speed at which trains may pass the level crossing, as may from time to time be made by the Board of Trade. If the company fails to erect, or to maintain, such lodge, or to appoint or keep a proper person to watch or superintend the level crossing, or to observe or abide by any such regulation as aforesaid, they shall for every such offence be liable to a penalty not exceeding £20, and also to a penalty of £10 for every day during which the offence continues after the penalty of £20 is incurred.

Company to erect lodge at point of crossing.

VII. The Board of Trade may, if it appears to them necessary for the public safety, at any time after the passing of the special Act, require the company, within such time as the Board of Trade directs, and at the

Board of Trade may require bridge instead of level crossing.



**Part VI.**

expense of the company, to carry the turnpike road or public carriage road either under or over the railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as, under the circumstances of the case, may appear to the board of trade best adapted for removing or diminishing the danger arising from the level crossing. Where the road is so carried either under or over the railway, it shall not be necessary for the company to erect or maintain a lodge at the point where the road is crossed, or to appoint a person to watch or superintend the crossing thereat, nor shall they be liable to any penalty for failure so to do.

Power to  
company to  
take additional  
land for  
such work.

VIII. If the Board of Trade certifies that the public safety requires that additional lands be taken by the company for the purpose of the work directed by the Board of Trade to be executed, the company may, subject to the provisions of the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation (Scotland) Act, 1845, as the case may require, enter upon, take, and use all or any part of the lands specified in the certificate of the Board of Trade as being necessary for the purpose of the work; and the Board of Trade before issuing the certificate shall cause at least 3 months notice to be given to any person who may be entitled to claim under the last-mentioned Acts, or otherwise, compensation in respect of the taking of such lands or in respect of such work.

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PART VII.  
OTHER STATUTES RELATING TO  
HIGHWAYS.

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CHAPTER XXIII.

Cap. XXIII.

THE DIVIDED PARISHES AND POOR  
LAW AMENDMENT ACT, 1876.

39 & 40 VICT. CAP. 61.

By this Act parts of parishes may under certain circumstances be amalgamated, &c., with others; and by sect. 5 of this Act, where a parish affected by the order (a) shall be included in a highway district, its condition therein, and the appointment of the waywarden thereof, shall be changed according to the terms of the order, whether its area or contents be diminished or increased thereby.

Amalgamation  
of parts of  
parishes with  
others.

By 42 & 43 Vict. c. 54, s. 7, "where a parish is a place separately maintaining its own highways, an order made either before or after the commencement of this Act, under the Divided Parishes and Poor Law Amendment Act, 1876, shall be deemed to have dealt with that parish for highway as well as for poor law purposes.

Where a parish is not a place separately maintaining its own highways, an order under the Divided Parishes

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(a) Of the local government board. See also *infra*.

**Part VII.** and Poor Law Amendment Act, 1876, dealing with such poor law parish or any part thereof, may deal with any area affected by the order for highway purposes in like manner as it deals with the same for poor law purposes.

Where any such order has been made before the passing of this Act, a supplemental order may be made under the said Act for the purposes of dealing with the area so far as regards highways.

For the purposes of this section, any parish, township, or place separately maintaining its own highways or entitled to return a separate waywarden to a highway board under the Highway Acts shall be deemed to be a place separately maintaining its own highways."

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CHAPTER XXIV.

Cap. XXIV.

THE SALE OF EXHAUSTED PARISH  
LANDS ACT, 1876.

39 & 40 VICT. CAP. 62 (a).

*An Act to make provision for the Disposal of certain  
Lands appropriated for the supply of materials for  
the repair of public and private roads.*

[15th August, 1876.]

WHEREAS it is expedient to provide for the disposal of certain lands herein described appropriated for the supply of materials to be used in the repair of the public and private roads in parishes :

Be it therefore enacted, &c., as follows :

I. Where land has been allotted to or otherwise acquired by a parish, whether in the name of the surveyor of highways or other trustees, or generally for the purpose of the supply of materials for the repair of the public roads and highways in such parish, and also for the repair of private roads therein, or for some other purpose, public or private, and the materials in such land shall be exhausted, or shall not be suitable or required, and the land shall not be available for such other purpose, if any, the same shall be dealt with as land which falls within the operation of the third section of the Union and Parish Property Act, 1835, and the Parish Property and Parish Debts Act, 1842, subject to the provisions hereinafter contained.

Sale of exhausted gravel pits wherein there are private or other interests.

II. Before issuing their order for the sale of the land, the Local Government Board shall hear and decide upon every objection and claim made in writing by

Local Government to hear and decide on objections and claims.

(a) See H. Act, 1835, s. 48, *ante*, p. 103.

**Part VII.** any person claiming an interest therein, within 3 months from the passing of the resolution for the sale of the land, and shall either refuse to sanction the sale, or allow it to proceed, providing if necessary for the interest of every person establishing the same out of the purchase money.

Disputed claims and interests of disabled persons.

III. If there be disputed claims to any interest in the said land, or if the person entitled to such interest be under legal disability, the board shall direct that proceedings may be taken in the high court of justice, or, where the amount of the value in question shall not exceed £50, in the county court, for the settlement of such dispute, or for the proper disposal of such amount where there is no such dispute.

Right of pre-emption by adjoining owner.

IV. When the board shall see fit they may order that the land shall be offered to the owner or owners, as the case may be, of the adjoining land, at a price to be settled in such manner as the board shall deem most expedient, and if such owner or owners shall be willing to purchase the same at such price the same shall be sold to such owner or owners, and not otherwise; and the declaration of such owner or owners as to their willingness to purchase shall be given within a time to be appointed by the said board.

Mines how to be dealt with.

V. Where any right to mines or minerals under the land is claimed by the lord of the manor or other person, the board may, if they see fit, reserve the same in their order for sale, or may order the sale subject to the right so claimed.

Appropriation of the interest of the parish in the produce of the sale.

VI. The said board, in dealing with the interest of the parish in the produce of the sale, shall cause such produce to be applied as far as practicable in the repair of the highways in the parish, or in some permanent improvement of the highways, or in an investment, so

that the annual dividends may be applicable in aid of **Cap. XXIV.**  
 the highway rate until the board shall otherwise order ;  
 and the said board shall have the like power of dealing  
 with the produce of the sale of lands under the H. Acts,  
 if applied to by the surveyor of highways or any autho-  
 rity exercising the powers of such surveyor, where such  
 produce cannot be conveniently appropriated in the  
 manner provided by those Acts.

VII. The word "parish" shall include every town-  
 ship or other place separately maintaining its own <sup>Interpreta-  
 tion of the  
 word</sup> highways, except that where such township is not a "parish."  
 parish within the operation of the above-mentioned  
 Acts of the years 1835 and 1842 respectively, the pro-  
 ceedings to be taken under them shall be restricted to  
 such township or place ; provided that the church-  
 wardens and overseers, or the overseers only, as the  
 case may be, of the parish, as defined in the Poor Law  
 Amendment Act of 1866, comprising such township or  
 place shall discharge all the duties hereby rendered  
 necessary for it in like manner as if it were co-exten-  
 sive with such parish.

VIII. This Act shall be termed "The Sale of Ex- Short title.  
 hausted Parish Lands Act, 1876."

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**THE DISTRICT AUDITORS ACT, 1879.**

**42 VICT. CAP. 6 (a).**

**Financial statement with stamp and certificate of district auditor.**

III. Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of sect. 6 of the Poor Law Amendment Act, 1866), a financial statement in duplicate in the prescribed form and containing the prescribed particulars; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement. He shall forthwith send the duplicate so stamped and certified by him to the Loc. Gov. Bd.; and in such case a return of the receipts or expenditure comprised in such statement need not, unless the Loc. Gov. Bd. so require, be sent to the board in pursuance of the Local Taxation Returns Acts, 1860 and 1877.

**Appointment and districts of auditors.**

Section 4 relates to the appointment and districts of district auditors.

**Regulations as to audit.**

V. Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited

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(a) See orders of Local Gov. Board as to audit, Part X.

by a district auditor, the Local Government Board may **Chap. XXV.**  
 from time to time by order make, and when made  
 revoke and vary, such regulations as seem to the board  
 necessary or proper respecting the audit of such ac-  
 counts, including the form of keeping the accounts of  
 the local authority and their officers, the day or days  
 to which the accounts are to be made up, the time  
 within which they are to be examined by the local  
 authority, the mode in which, if it is so prescribed,  
 they are to be certified by the local authority or any  
 officer of that authority, the mode of publishing the  
 time and place of holding the audit, the persons by  
 whom such accounts are to be produced for audit, and  
 the mode of conducting the audit, and an order under  
 this section shall be deemed to be an order within the  
 meaning of s. 98 of the Poor Law Am. Act, 1834.

By sect. 6 the stamp duties are under the inland **Stamp duties**  
 revenue; "and such duties may, if the commissioners **under inland**  
 so direct, be denoted by adhesive stamps, to be can- **revenue.**  
 celled by the auditor as provided by this Act."

VII. If a local authority fail to comply with the **Failure to**  
 provisions of this Act with respect to a financial state- **submit**  
 ment, such local authority, or if a clerk to the local **financial**  
 authority is appointed, that clerk, and if no clerk is **statement.**  
 appointed, but there is a treasurer or other officer  
 keeping the accounts which should be comprised in such  
 financial statement, that treasurer or other officer shall  
 be liable to a fine not exceeding £20 for each offence,  
 to be recovered by action on behalf of H. M. in the  
 high court of justice.

VIII. In this Act—

**Definitions.**

The expression "local rate" means the poor rate,  
 the general district rate, and every rate the pro-  
 ceeds of which are applicable to public local pur-  
 poses, and which is leviable on the basis of a



**Part VII.**

poundage assessment of the value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

The expression "local authority" means any person or body of persons who receive and expend any local rate, but does not include overseers of the poor.

The expression "prescribed" means prescribed from time to time by the Local Government Board.

The expression "Treasury" means the Commissioners of H. M.'s Treasury.

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**FIRST SCHEDULE.**
*Scale of Stamp Duties payable by Local authorities.*

| Where the Total of the Expenditure comprised in the Financial Statement is | The Sum shall be |
|----------------------------------------------------------------------------|------------------|
| Under 20 <i>l.</i> ... ..                                                  | 5 <i>s.</i>      |
| 20 <i>l.</i> and under 50 <i>l.</i> ... ..                                 | 10 <i>s.</i>     |
| 50 <i>l.</i> and under 100 <i>l.</i> ... ..                                | 1 <i>l.</i>      |
| 100 <i>l.</i> and under 500 <i>l.</i> ... ..                               | 2 <i>l.</i>      |
| 500 <i>l.</i> and under 1,000 <i>l.</i> ... ..                             | 3 <i>l.</i>      |
| 1,000 <i>l.</i> and under 2,500 <i>l.</i> ... ..                           | 4 <i>l.</i>      |
| 2,500 <i>l.</i> and under 5,000 <i>l.</i> ... ..                           | 5 <i>l.</i>      |
| 5,000 <i>l.</i> and under 10,000 <i>l.</i> ... ..                          | 10 <i>l.</i>     |
| 10,000 <i>l.</i> and under 20,000 <i>l.</i> ... ..                         | 15 <i>l.</i>     |
| 20,000 <i>l.</i> and under 50,000 <i>l.</i> ... ..                         | 20 <i>l.</i>     |
| 50,000 <i>l.</i> and under 100,000 <i>l.</i> ... ..                        | 30 <i>l.</i>     |
| 100,000 <i>l.</i> and upwards ... ..                                       | 50 <i>l.</i>     |

For the purposes of this schedule the expenditure comprised in the financial statement shall be exclusive of any sum paid to another local authority in pursuance of a precept.

HIGHWAY ACCOUNTS RETURNS ACT,  
1879.

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42 & 43 VICT. CAP. 39.

*An Act to amend the law with respect to Returns of Receipts and Expenditure as regards Highways, and to dispense with the verification before Justices of the accounts of Surveyors of Highways.*

[11th August, 1879.]

WHEREAS by divers Acts provisions differing from each other are made respecting the transmission to the Local Government Board and the laying before Parliament of annual returns of the receipts and expenditure on account of highways in parishes, certain urban sanitary districts, and highway districts :

And whereas it is expedient that one return only in each case should be required, and that such return should be made and laid before Parliament in like manner as other returns under the Local Taxation Returns Acts, 1860 and 1877 (a), subject to being dispensed with in like manner as such other returns :

And whereas by the H. Act, 1835 (b), the surveyor of highways of every parish is required, amongst other matters, to verify his accounts before justices at special sessions, and the said verification of accounts has been rendered unnecessary by the Highways and Locomotives Amendment Act, 1878 (c), which requires the

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(a) 23 & 24 Vict. c. 51; 40 & 41 Vict. c. 66.

(b) 5 & 6 Will. 4, c. 50, s. 45.

(c) 41 & 42 Vict. c. 77, s. 9.

**Part VII.** accounts of the surveyors of highways to be audited by the district auditor, and it is expedient to dispense with such verification :

Be it therefore enacted, &c., as follows:

**Short title.** I. This Act may be cited as the Highway Accounts Returns Act, 1879.

**Return of receipts and expenditure as regards highways.** II. The Local Taxation Returns Acts, 1860 and 1877 (a), shall apply to returns of rates, receipts, and expenditure as regards highways in like manner as if they were specifically mentioned in the said Acts, and highway boards and surveyors of highways were mentioned as local authorities in those Acts, and the surveyor of highways were an officer keeping the accounts of the rates, receipts, and expenditure within the meaning of those Acts :

Provided that a return under the said Acts may be dispensed with upon the delivery to the auditor of a financial statement of the said receipts and expenditure in like manner as in any other case.

**Repeal and temporary provision.** III. The Acts specified in the Schedule to this Act are hereby repealed to the extent in the third column of that Schedule mentioned.

Where in pursuance of any enactment hereby repealed the accounts of a surveyor of highways for a parish for the period ending on the 25th day of March, 1879, have been verified, and a statement of the receipts and expenditure of such parish as regards highways for the said period has been transmitted to the Local Government Board, the Board may, if they think fit, dispense with the submission of a financial statement and dispense wholly or partly with the audit by the district auditor of the accounts for the said period of such parish as regards highways.

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(a) 23 & 24 Vict. c. 51 ; 40 & 41 Vict. c. 66.

## SCHEDULE.

## ACTS REPEALED.

| Year and Chapter.     | Title of Act.                                                                                                                                                              | Extent of Repeal.                                                                                       |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| 5 & 6 Will. 4, c. 50. | Highway Act, 1835- -                                                                                                                                                       | In section 45 from and including the words "and at the said special sessions" to the end of the section |
| 12 & 13 Vict. c. 35.  | An Act for requiring annual returns of the expenditure on highways in England and Wales to be transmitted to the Secretary of State and afterwards laid before Parliament. | The whole Act                                                                                           |
| 25 & 26 Vict. c. 61.  | The Highway Act, 1862 -                                                                                                                                                    | Sections 27, 28, and 29.                                                                                |

**Part VIII.**

**PART VIII.**  
**LOCOMOTIVE ACTS (a).**

**CHAPTER XXVII.**

**LOCOMOTIVES ACT, 1861.**

24 & 25 VICT. CAP. 70.

*An Act for regulating the Use of Locomotives on Turnpike and other Roads, and the Tolls to be levied on such Locomotives and on the Waggons and Carriages drawn or propelled by the same.*

[1st August, 1861.]

WHEREAS the use of locomotives is likely to become common on turnpike and other roads; and whereas the general Turnpike and Highway Acts and many of the Local Turnpike Acts do not contain any provisions for regulating the use of locomotives on the roads to which they respectively apply, nor do they authorize the levying of tolls upon or in respect of any locomotive using the roads, or upon or in respect of any waggon or carriage drawn by locomotives; and whereas under and by virtue of certain local turnpike Acts tolls may be levied upon locomotives and other engines drawing or propelling waggons or carriages, or upon the waggons or carriages so drawn or propelled, which are or may be prohibitory of the use of locomotives on the roads to which the said Acts respectively apply: And whereas the weighing clauses in the general Turnpike Acts have not been framed in anticipation of traffic by locomotives, and are in many respects ill adapted to the profit-

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(a) See the Highway and Locomotives Amendment Act, 1875, *ante*, p. 256.

able carrying of goods, or to the levying of just and adequate tolls upon waggons or carriages drawn by locomotives: And whereas it is desirable that the use of locomotives on turnpike and other roads should be regulated by uniform general provisions, and that tolls should be levied upon such locomotives and the waggons or carriages drawn by such locomotives upon turnpike roads: Be it therefore enacted, &c., as follows:

Cap. XXVII.

Sections 1 and 2 relate to the tolls to be taken for locomotives on turnpike roads, &c.

III. This section is repealed, so far as it relates to England, by H. Act, 1878, s. 28, *ante*, p. 280, and other enactments made in lieu thereof.

IV. It shall not be lawful for any waggon, wain, cart, or other carriage so drawn or propelled as aforesaid, not having cylindrical wheels, to carry any greater weight than is permitted in such waggon, wain, cart, or carriage by the general Turnpike Act; and it shall not be lawful for any waggon, wain, cart, or other carriage having cylindrical wheels to carry over or above the weight of the waggon, wain, cart, or carriage any greater weight than one ton and a half for each pair of wheels unless the fellys, tires, or shoes are 4 inches or more in breadth; nor to carry a greater weight than 2 tons for each pair of wheels, unless the fellys, tires, or shoes are 6 inches or more in breadth; nor to carry a greater weight than 3 tons for each pair of wheels, unless the fellys, tires, or shoes are 8 inches or more in breadth; and for every single wheel one half of that permitted to be carried on a pair of wheels; nor in any case to carry a greater weight than 4 tons on each pair of wheels, or 2 tons on each wheel; but if such waggons, wains, or other carriages are built and constructed with springs upon each axle, then they shall be allowed to carry one-sixth more weight in addition to the above-mentioned weights upon each pair of

As to the weight on each pair of wheels.

**Part VIII.** wheels : provided always, that the regulation of weight herein mentioned and provided shall not extend to any waggon, wain, cart, or other carriage carrying only one tree or one log of timber, or one block of stone, or one cable or rope, or one block, plate, roll, or vessel of iron or other metal, or compounded of any two or more metals cast, wrought, or united in one piece.

V. Repealed by 28 & 29 Vict. c. 83, s. 2, *post*, p. 386.

Use of  
locomotives  
restricted  
over suspen-  
sion and  
other  
bridges.

VI. It shall not be lawful for the owner or driver of any locomotive to drive it over any suspension bridge nor over any bridge on which a conspicuous notice has been placed, by the authority of the surveyor, or persons liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the district, without previously obtaining the consent of the surveyor of the road or bridgemaster under whose charge such bridge shall be for the time being, or of the persons liable to the repair of such bridge; and in case such owner of the locomotive and surveyor of the road or bridge, or bridgemaster, shall differ in opinion as to the sufficiency of any bridge to sustain the transit of the locomotive, then the question shall be determined by an officer to be appointed, on the application of either party, by one of H. M.'s principal secretaries of state, whose certificate of sufficiency of such bridge shall entitle the owner of the locomotive to take the same over such bridge.

Damage  
caused by  
locomotives  
to bridges  
to be made  
good by  
owner. (a)

VII. Where any turnpike or other roads, upon which locomotives are or hereafter may be used, pass or are or shall be carried over or across any stream or water-course, navigable river, canal, or railway, by means of

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(a) This enactment does not apply to public bridges repairable by the inhabitants of a county so as to relieve them from their liability at common law to repair, and render the owner of the locomotive liable to an indictment for the non-repair of such a bridge so damaged by such locomotive. *R. v. Kitchen*, 43 L.J. M. C. 8.

any bridge or arch (whether stationary or moveable), and Cap. XXVII. such bridge or arch, or any of the walls, buttresses, or supports thereof, shall be damaged by reason of any locomotive or any waggon or carriage drawn or propelled by or together with a locomotive passing over the same or coming into contact therewith, none of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other person interested in or having the charge of such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, shall be liable to repair or make good any damage so to be occasioned, or to make compensation to any person for any obstruction, interruption, or delay which may arise therefrom to the use of such bridge or arch, navigable river, canal, or railway, but every such damage shall be forthwith repaired to the satisfaction of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons as aforesaid respectively interested in or having the charge of such river, canal, or railway, or the tolls thereof, or of such bridge, or arch, by and at the expense of the owner or owners or the person or persons having the charge of such locomotive at the time of the happening of such damage; and all such owner and owners, person and persons, having the charge of such locomotive as aforesaid, shall also be liable, both jointly and severally, to reimburse and make good as well to the proprietors, undertakers, directors, conservators, trustees, commissioners, and other persons interested in or having the charge of any such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, as to all persons navigating on or using, or who but for such obstruction, interruption, or delay, would have navigated on or used the same, all losses and expenses which they or any of them may sustain or incur by reason of any such obstruction, interruption, or delay, such losses and expenses to be recoverable by action at law, which action, in case of such proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons



**Part VIII.** so interested as aforesaid, may be brought in the name or names of their agent or agents, clerk or clerks for the time being, or by any person or persons legally authorized to act in their behalf.

Locomotives propelled by steam to consume their own smoke.

VIII. This section is repealed by H. Act, 1878, s. 30, and in lieu thereof by that section another enactment is made, which see *ante*, p. 282.

IX. Repealed by 28 & 29 Vict, c. 83, s. 2, *post*, p. 386.

Exemption from tolls of waggons, &c., now exempt under local or general Act.

X. All waggons, wains, carts, or carriages, as hereinbefore described, drawn by any locomotive, and loaded with any materials such as are now exempt from toll under the provisions of any general or local Act, shall be entitled to the same exemption as they would be if drawn by animal power.

XI. Repealed by 28 & 29 Vict. c. 83, s. 2, *post*, p. 386.

Provisions of general Acts relating to turnpike roads or highways to apply to locomotives.

XII. All clauses and provisions of any general or local Acts relating to turnpike roads or highways shall, so far as the same are not expressly altered or repealed by or are not inconsistent with the provisions of this Act, apply to all locomotives propelled by other than animal power, and to all waggons, wains, carts, and carriages of any other description drawn by such locomotive, and to the owners, drivers, and attendants thereof, in like manner as if drawn by animal power: Provided always, that the weight of every locomotive, and the name of the owner or owners thereof, shall be conspicuously and legibly affixed thereon; and any owner not having affixed such weight and such name shall, upon conviction thereof before two justices, forfeit any sum not exceeding £5, and any owner who shall fraudulently affix thereon any incorrect weight shall, upon conviction thereof, forfeit any sum not exceeding £10.

XIII. Nothing in this Act contained shall authorize **Cap. XXVII.** any person to use upon a highway a locomotive engine <sup>Right of</sup> which shall be so constructed or used as to cause a <sup>action in</sup> public or private nuisance; and every such person so <sup>case of nui-</sup> using such engine shall, notwithstanding this Act, be <sup>sance.</sup> liable to an indictment or action, as the case may be, for such use, where, but for the passing of this Act, such indictment or action could be maintained.

XIV. This Act may be cited as the "Locomotive Act, <sup>Short title.</sup> 1861."

XV. Repealed by 28 & 29 Vict. c. 83, s. 2, *post*, p. 386.

LOCOMOTIVES ACT, 1865 (a).

28 & 29 VICT. CAP. 83.

*An Act for further regulating the Use of Locomotives on Turnpike and other Roads for Agricultural and other purposes.*

[5th July, 1865.]

WHEREAS by the Locomotives Act, 1861, certain provision was made for regulating the use of locomotives on turnpike and other roads, and it is expedient that further and fuller provision should be made for that object; Be it therefore enacted, &c.

Commence-  
ment of Act.

I. This Act shall not come into operation till the 1st September, 1865, which day is hereinafter referred to as the commencement of the Act, and shall cease and determine on the 1st September, 1867 (b).

Certain sec-  
tions of 24 &  
25 Vict. c. 70  
repealed.

II. After the commencement of this Act, and so long as the same shall continue in force, the 5th, 9th, 11th, and 15th sections of the said recited Act, and all orders made in pursuance of the said 5th section, are hereby repealed.

Rules for the  
manner of  
working loco-  
motives on  
turnpike roads  
and highways  
herein stated.

III. Every locomotive propelled by steam or any other than animal power on any turnpike road or public highway shall be worked according to the following rules and regulations, viz. :—

1st. At least three persons shall be employed to drive or conduct such locomotive, and if more

(a) See H. Act, 1878, *ante*, p. 280.

(b) This Act has since been continued by the 44 & 45 Vict. c. 70, and previous continuance Acts, to the 31st December, 1883.

than two waggons or carriages be attached, Cap XXVIII  
thereto, an additional person shall be employed,  
who shall take charge of such waggons or  
carriages :

2nd. (c) \* \* \* \* \*

3rd. The drivers of such locomotives shall give as much space as possible for the passing of other traffic :

4th. The whistle of such locomotive shall not be sounded for any purpose whatever : nor shall the cylinder taps be opened within sight of any person riding, driving, leading or in charge of a horse upon the road ; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the locomotive is upon the road :

5th. Every such locomotive shall be instantly stopped on the person preceding the same, or any other person with a horse or carriage drawn by a horse, putting up his hand as a signal to require such locomotive to be stopped :

6th. Any person in charge of any such locomotive shall provide two efficient lights to be affixed conspicuously, one at each side on the front of the same, between the hours of one hour after sunset, and one hour before sunrise :

In the event of a non-compliance with any of the provisions of this section, the owner of the locomotive

Penalty on non-compliance with rules.

(c) This paragraph is repealed so far as relates to England by s. 29 of H. Act, 1878 (*ante*, p. 282), and in lieu thereof the following is substituted : " Secondly, one of such persons, while the locomotive is in motion, shall precede by at least 20 yards the locomotive on foot, and shall in case of need assist horses, and carriages drawn by horses, passing the same." This enactment may be complied with though the person whilst preceding the locomotive on foot is leading a horse and cart of his own. *Davis v. Brown*, 48 L. J. M. C. 92.

**Part VIII.** shall, on summary conviction thereof before two justices, be liable to a penalty not exceeding £10; but it shall be lawful for such owner on proving that he has incurred such penalty by reason of the negligence or wilful default of any person in charge of or in attendance on such locomotive, to recover summarily from such person the whole or any part of the penalty he may have incurred as owner.

Limit of  
speed of loco-  
motives on  
turnpike roads  
and highways.

IV. Subject and without prejudice to the regulations hereinafter authorized to be made by local authorities, it shall not be lawful to drive any such locomotive along any turnpike road or public highway at a greater speed than four miles an hour, or through any city, town or village at a greater speed than two miles an hour; and any person acting contrary thereto shall for every such offence, on summary conviction thereof, forfeit any sum not exceeding £10.

V. Repealed by H. Act, 1878, s. 28, *ante*, p. 280, so far as relates to England and other enactments made in lieu thereof.

Restrictions as  
to the use of  
steam engines  
within 25  
yards of  
roads not to  
apply to loco-  
motives used  
for ploughing  
purposes.

VI. Any provision in any Act contained (a) prohibiting, under penalty, the erection and use of any steam engine, gin, or other like machine, or any machinery attached thereto within the distance of 25 yards from any part of any turnpike road, highway, carriage-

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(a) See similar provisions in H. Act, 1835, s. 70, *ante*, p. 123 with regard to highways; and in 27 & 28 Vict. c. 75, s. 1, with respect to turnpike roads.

In *Smith v. Stokes*, 32 L. J. M. C. 199, 27 J. P. 535, it was held that a portable engine on wheels drawn by horses from place to place and used to drive a threshing machine within a barn without being fixed into the ground, is a steam engine within the meaning of H. Act, 1835, s. 70. But the owner of such an engine let out to hire cannot be convicted if he was not present and took no part in fixing the engine within the prohibited distance. *Harrison v. Leaper*, 26 J. P. 373.

way, or cartway, unless such steam engine, gin, or other **Cap XXVIII** like engine or machinery be within some house or other building, or behind some wall, fence, or screen sufficient to conceal or screen the same from such turnpike road, highway, carriageway, or cartway, shall not extend to prohibit the use of any locomotive steam engine for the purpose of ploughing within such distance of any such turnpike road, highway, carriage-way, or cartway, provided a person shall be stationed in the road, and employed to signal the driver when it shall be necessary to stop and to assist horses, and carriages drawn by horses, passing the same, and provided the driver of the engine do stop in proper time.

VII. The name and residence of the owner of every locomotive shall be affixed thereto in a conspicuous manner. If it is not so affixed the owner shall, on summary conviction, be liable to a penalty not exceeding £2 (b). Name and residence of owner to be affixed to locomotives.

VIII. This section is repealed as to England by H. Act, 1878, s. 31, and another provision by that section substituted, which see *ante*, p. 282.

IX. and X. apply to Ireland only.

XI. Nothing in this Act contained shall repeal, alter, or in any way affect the provisions of the 41st section of the Thames Embankment Act, 1862. Sect. 41 of 25 & 26 Vict. c. 93, not to be affected.

XII. Nothing in this Act contained shall authorize any person to use a locomotive which may be so constructed or used as to be a public nuisance at com- Saving as to actions at law.

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(b) The 12th section of 24 & 25 Vict. c. 70, *ante*, p. 384, also requires the owner to affix the weight of the engine and his own name, under a penalty of £5 in case of failure to do so,

**Part VIII.** mon law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of the locomotive (a).

**Short title.** XIII. This Act may be cited as The Locomotives Act, 1865; and The Locomotives Act, 1861, and this Act shall be construed together as one Act.

**H. & Loco.** The Highways and Locomotives (Amendment) Act,  
**Amt. Act,** 1878, is set out *ante*, p. 256.

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(a) See *Watkins v. Redding*, 2 F. & F. 629; *Powell v. Fall*, 49 L. J. Q. B. 428, where defendant was held liable for injury done though there was no negligence.

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PART IX.  
TRAMWAYS ACTS.

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CHAPTER XXIX.

Cap. XXIX.

THE TRAMWAYS ACT, 1870.

33 & 34 VICT. CAP. 78.

*An Act to facilitate the construction and to regulate the  
working of Tramways.*

[9th August, 1870.]

Be it enacted, &c., as follows :

*Preliminary.*

I. This Act may be cited for all purposes as "The Short title.  
Tramways Act, 1870."

II. This Act shall not extend to Ireland.

Limitation  
of Act.

III. For the purposes of this Act the terms herein-  
after mentioned shall have the meanings hereinafter  
assigned to them ; that is to say,—

Interpreta-  
tion of terms.

The terms "local authority" and "local rate" shall  
mean respectively the bodies of persons and rate  
named in the table in Part I. of the schedule (A.)  
to this Act annexed :

The term "road" shall mean any carriageway being



**Part IX.**

a public highway, and the carriageway of any bridge forming part of or leading to the same:

The term "road authority" shall mean, in the districts specified in the table in Part II. of the schedule (A.) to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road:

The term "district," in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

The term "the Lands Clauses Acts" means, so far as the provisional order in which that term is used relates to England, The Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, The Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, The Lands Clauses Consolidation Acts Amendment Act, 1860:

The term "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

**PART I.**

*Provisional Orders authorizing the Construction of Tramways (a).*

By whom  
provisional  
orders autho-  
rizing the

IV. Provisional orders authorizing the construction of tramways in any district may be obtained by—

(1.) The local authority of such district; or by—

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(a) See *post*, p. 439.

- (2.) Any person, persons, corporation, or company, **Cap. XXIX.**  
 with the consent of the local authority of such district; or of the road authority of such district where such district is or forms part of a highway district formed under the provisions of "The Highway Acts:"

construction  
of tramways  
may be  
obtained.

And any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as "the promoters."

Application for a provisional order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the schedule A. to this Act annexed.

Where in any district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority, before any provisional order can be obtained.

V. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such districts does not consent thereto, the Board of Trade may, nevertheless, make a provisional order authorizing the construction of such tramway if they are satisfied, after inquiry, that two-thirds of the length of such tramway is proposed to be laid in a district or in districts the local and road authority or the local and road authorities of which district or districts do consent thereto; and in such case they shall make a special report stating the grounds upon which they have made such order.

The Board  
of Trade may  
in certain  
cases dispense  
with the con-  
sent of local  
or road  
authority.

- VI. The promoters intending to make an application for a provisional order shall proceed as follows.—
- (1.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their

Notices and  
deposit of  
documents by  
promoters as  
in schedule.

**Part IX.**

intention to make such application by advertisement; and they shall, on or before the 15th day of the following month of December, serve notice of such intention, in accordance with the standing orders (if any) of both Houses of Parliament for the time being in force with respect to bills for the construction of tramways :

- (2.) On or before the 30th day of the same month of November they shall deposit the documents described in Part II. of the same schedule, according to the regulations therein contained (a) :
- (3.) On or before the 23rd day of December in the same year they shall deposit the documents described in Part III. of the same schedule, according to the regulations therein contained (a) :

All maps, plans, and documents required by this Act to be deposited for the purposes of any provisional order may be deposited with the persons and in the manner directed by the 7 Will. 4 and 1 Vict., intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament;" and all the provisions of that Act shall apply accordingly.

Power for  
Board of  
Trade to  
determine on  
application  
and on  
objection.

VII. The Board of Trade shall consider the application, and may, if they think fit, direct an inquiry in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and they shall consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the promoters may proceed with the application.

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(a) See *post*, p. 440.

VIII. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Board of Trade may settle and make a provisional order accordingly.

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Power for Board of Trade to make provisional order.

Every such provisional order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the Board of Trade, according to the nature of the application and the facts and circumstances of each case, think fit to submit to Parliament for confirmation in manner provided by this Act; but so that any such provisional order shall not contain any provision for empowering the promoters or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited, or to construct a tramway elsewhere than along or across a road, or upon land taken by agreement.

Form and contents of provisional order.

IX. Every tramway in a town which is hereafter authorized by provisional order shall be constructed and maintained as nearly as may be in the middle of the road; and no tramway shall be authorized by any provisional order to be so laid that for a distance of 30 feet or upwards a less space than 9 feet and 6 inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway if one third of the owners or one third of the occupiers of the houses, shops, or warehouses abutting upon the part of the road where such less space shall intervene as aforesaid shall in the prescribed manner and at the prescribed time express their dissent from any tramway being so laid.

Regulations as to construction of tramways in towns.

X. Every such provisional order shall specify the nature of the traffic for which such tramway is to be

Nature of traffic on tramway and

**Part IX.**  
tolls to be  
specified in  
provisional  
order.

used, and the tolls and charges which may be demanded and taken by the promoters in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the Board of Trade shall deem necessary and proper.

Costs of  
order.

XI. The costs of and connected with the preparation and making of each provisional order shall be paid by the promoters, and the Board of Trade may require the promoters to give security for such costs before they proceed with the provisional order.

Promoters  
to deposit  
£4 per cent.  
on estimate  
in prescribed  
bank.

XII. After a provisional order is ready, and before the same is delivered by the Board of Trade, the promoters, unless they are a local authority, shall within the prescribed time and in the prescribed manner, and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay, as a deposit, into the prescribed bank, the sum of money prescribed, which shall not be less than £4 per centum on the amount of the estimate by the promoters of the expense of the construction of the tramway, or deposit in such bank any security of the prescribed nature the then value of which is not less than such sum of money.

Publication of  
provisional  
order as in  
schedule.

XIII. When a provisional order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement, according to the regulations contained in Part Four of the schedule (B.) to this Act.

Confirmation  
of provisional  
order by Act  
of parliament.

XIV. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid (a), the Board of Trade shall, as soon as they

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(a) See 34 & 35 Vict. c. 69, passed 14th August, 1871, and 35 & 36 Vict. c. 43, passed 6th August, 1872, Acts to enable the

conveniently can after the expiration of 7 days from the Cap. XXIX. completion of such publication, procure a bill to be introduced into either house of parliament in relation to any provisional order which shall have been published as aforesaid not later than the 25th of April in any year, for an Act to confirm the provisional order, which shall be set out at length in the schedule to the bill; and until confirmation, with or without amendment, by Act of parliament, a provisional order under this Act shall not have any operation.

If while any such bill is pending in either house of parliament a petition is presented against any provisional order comprised therein, the bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act.

The Act of parliament confirming a provisional order under this Act shall be deemed a public general Act.

XV. The provisions of the Lands Clauses Acts shall be incorporated with every provisional order under this Act, save where the same are expressly varied or excepted by any such provisional order, and except as to the following provisions, namely,—

Incorporation  
of general  
Acts in  
provisional  
order.

- (1.) With respect to the purchase and taking of lands otherwise than by agreement:
- (2.) With respect to the entry upon lands by the promoters of the undertaking.

For the purposes of such incorporation a provisional order under this Act shall be deemed the special Act.

XVI. The Board of Trade on the application of any promoters empowered by a provisional order may from time to time revoke, amend, extend, or vary such provisional order by a further provisional order.

Power of  
board of trade  
to revoke,  
amend, ex-  
tend, or vary  
provisional  
order.

board of trade to dispense with certain provisions of the above Act in respect of certain provisional orders obtained before such dates.

**Part IX.**

Every application for such further provisional order shall be made in like manner and subject to the like conditions as the application for the former provisional order.

Every such further provisional order shall be made and confirmed in like manner in every respect as the former provisional order, and until such confirmation such further provisional order shall not have any operation.

Powers to  
authorize  
joint work.

XVII. Subject and according to the provisions of this Act, the Board of Trade may, on a joint application, or on two or more separate applications, settle and make a provisional order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of such tramway as last aforesaid; and the form of the provisional order may be adapted to the circumstance of the case.

Cesser of  
powers at  
expiration of  
prescribed  
time.

XVIII. If the promoters empowered by any provisional order under this Act to make a tramway, do not, within two years from the date of the same, or within any shorter period prescribed therein, complete the tramway and open it for public traffic; or,

If within one year from the date of the provisional order, or within such shorter time as is prescribed in the same, the works are not substantially commenced; or,

If the works having been commenced are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the provisional order to the promoters for constructing such tramway, executing such

works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade; and as to so much of the same as is then completed the Board of Trade may allow the said powers to continue and to be exercised if they shall think fit, but failing such permission the same shall cease to be exercised, and where such permission is withheld then so much of the said tramway as is then completed shall be deemed to be a tramway to which all the provisions of this Act relating to the discontinuance of tramways after proof of such discontinuance shall apply, and may be dealt with accordingly.

A notice purporting to be published by the Board of Trade in the *London or Edinburgh Gazette*, accordingly as the district to which it relates is situated in England or Scotland, to the effect that a tramway has not been completed and opened for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

XIX. When a tramway has been completed under the authority of a provisional order by any local authority, or where any local authority has under the provisions of this Act acquired possession of any tramway, such authority may, with the consent of the Board of Trade, and subject to the provisions of this Act, by lease, to be approved of by the Board of Trade, demise to any person, persons, corporation, or company the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorized; or such authority may leave such tramway open to be used by the public, and may in respect of

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Local authority may  
lease or take  
tolls.



**Part IX.** such user demand and take the tolls and charges authorized; but nothing in this Act contained shall authorize any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges in respect of the use of such carriages.

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Part I. of the schedule (C.) to this Act annexed; and unless such notice is given, and such copy deposited, such lease shall not be approved of by the Board of Trade.

Every such lease shall be made for a term or for terms not exceeding in the whole 21 years.

On the determination of any lease made under this Act, the local authority may from time to time, with the consent of the Board of Trade, by lease, demise such rights for such further term or terms not exceeding in any case 21 years, as the said board may approve.

Every such lease shall imply a condition of re-entry, if at any time after the making of the same the lessees discontinue the working of the tramway leased, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control).

The person, persons, corporation, or company to whom any such lease may be made are in this Act referred to as "lessees."

How expenses to be defrayed.

XX. Where the local authority in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a provisional order, and carrying into effect the purposes of such provisional order, out of the local rate, and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such expenses, the board of trade may, by the provisional order, extend the limit of such local rate to such amount as they shall think fit, and prescribe for the payment of such expenses. **Cap. XXIX.**

Such local authority may, for the purposes of such provisional order, borrow and take up at interest, on the credit of such local rate, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such local authority may mortgage to the persons by or on behalf of whom such sums are advanced such local rate; but the exercise of the above-mentioned power shall be subject to the following regulations:

- (1.) The money so borrowed shall not exceed such sum as may be sanctioned by the Board of Trade:
- (2.) The money may be borrowed for such time, not exceeding 30 years, as such local authority, with the sanction of the board of trade, shall determine; and, subject as aforesaid to the repayment within 30 years, such local authority may either pay off the monies so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other government securities, such sum as will be sufficient to pay off the monies so borrowed, or a part thereof, at such times as the local authority may determine.

The provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, shall apply to any mortgage executed under the foregoing provisions of this section, and for the purposes of such application the said provisions shall be incorporated with this Act.

**Part IX.** For the purposes of such incorporation, the terms “the special Act,” and “the commissioners,” shall be construed to mean respectively a provisional order under this Act, and the local authority.

Such local authority shall keep separate accounts of all monies paid by them in applying for, obtaining, and carrying into effect any such provisional order, and in the repayment of monies borrowed, and of all monies received by them by way of rent or tolls in respect of the tramway authorized thereby.

When, after payment of all charges incurred under the authority of this Act, and necessary for giving effect to such provisional order, there shall be remaining in the hands of such local authority any of the monies received by them by way of rent or tolls in respect of the tramway authorized by such provisional order, such monies shall be applied by them to the purposes for which the local rate may be by them applied.

Metropolitan board may, for carrying provisional order into effect, create stock under Loans Act of 1869.

XXI. The Metropolitan Board of Works by this section have certain powers to raise money for the purpose of carrying into effect the purposes of any provisional order obtained by them.

## PART II.

### *Construction of Tramways.*

As to incorporation of Parts II. and III. of this Act with provisional order and special Acts.

XXII. Part II. and Part III. of this Act shall apply to every tramway which is hereafter authorized by any provisional order or Act of parliament, and shall be incorporated with such provisional order or Act, and all the said provisions of this Act, save so far as they shall be expressly varied or excepted by any such provisional order or Act, shall apply to the under-

taking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the provisions of every other Act or part of any Act which shall be incorporated therewith, form part of the said provisional order or Act, and be construed therewith as forming one provisional order or Act, as the case may be. Cap. XXIX.

XXIII. In Part II. and Part III. of this Act, the "Special Act." term "special Act" shall be construed to mean any Act of parliament which shall be hereafter passed or any provisional order authorizing the construction of a tramway, and with which the said parts of this Act shall be incorporated as aforesaid.

XXIV. The term "the promoters" shall mean any "Promoters." person, or persons, corporation, company, or local authority authorized by special Act to construct a tramway.

XXV. Every tramway which is hereafter authorized by special Act shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramways of carriages constructed for use upon railways of a gauge of 4 feet 8 inches and half an inch, and shall be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the surface of the road, and shall not be opened for public traffic until the same has been inspected and certified to be fit for such traffic, in the prescribed manner. Mode of  
formation of  
tramways.

XXVI. The promoters from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorized or any part or parts thereof respectively, may open and break up any road, subject to the following regulations : Power to  
break up  
streets, &c.

**Part IX.**

1. They shall give to the road authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given 7 days at least before the commencement of the work :
2. They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work :
3. They shall pay all reasonable expenses to which the road authority is put on account of such superintendence :
4. They shall not, without the consent of the road authority, open or break up at any one time a greater length than 100 yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length the promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than 100 yards.

Where the carriageway over any bridge forms part of or is a road within the jurisdiction of a road authority, but such bridge is vested in some person or persons, corporation, or company, distinct from such road authority, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with the structural works of such bridge, shall be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of such person, persons, corporation, or company, unless after notice to be given by the promoters 7 days

at least before the commencement of such work such Cap. XXIX. superintendence is refused or withheld.

Where the carriageway in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway, unless after notice to be given by the promoters 7 days at least before the commencement of such work such superintendence is refused or withheld.

XXVII. When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations ; namely,

Completion  
of work  
and rein-  
statement  
of road.

1. They shall, with all convenient speed, and in all cases within 4 weeks at the most (unless the road authority otherwise consents in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby :
2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night :
3. They shall bear or pay all reasonable expenses of the repair of the road for 6 months after the

**Part IX.**

same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty not exceeding £20, and to a further penalty not exceeding £5 for each day during which any such failure continues after the first day on which such penalty is incurred.

Repair of  
part of road  
where tram-  
way is laid.

XXVIII. The promoters shall, at their own expense, at all times maintain and keep in good condition and repair, with such materials and in such manner as the road authority shall direct, and to their satisfaction, so much of any road whereon any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than 4 feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends 18 inches beyond the rails of and on each side of any such tramway. If the promoters abandon their undertaking, or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within 6 weeks at the most (unless the road authority otherwise consents in writing), fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work; and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night: Provided:

always, that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after 7 days notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned, and the expense incurred by the road authority in so doing shall be repaid to them by the promoters. Cap. XXIX.

XXIX. The road authority on the one hand and the promoters on the other hand may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway of any road on which the promoters shall lay any tramway, and the proportion to be paid by either of them of the expense of such paving and keeping in repair. Road authority and promoters may contract for paving roads on which tramways are laid.

XXX. For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters may from time to time, where and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connection with the same, alter the position of any mains or pipes for the supply of gas or water, or any tube, wires, or apparatus for telegraphic or other purposes, subject to the provisions of this Act, and also subject to the following restrictions; (that is to say,) Provision as to gas and water companies.

1. Before laying down a tramway in a road in which any mains or pipes, tubes, wires, or apparatus may be laid, the promoters shall, whether they contemplate altering the position of any such mains or pipes, wires, or apparatus, or not, give 7 days notice to the company, persons, or person to whom such mains or pipes, tubes, wires, or



**Part IX.**  

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apparatus may belong or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or person that the construction of the tramway as proposed would endanger any such main or pipe, tube, wire, or apparatus, or interfere with or impede the supply of water or gas or the telegraphic or other communication, such company or person (as the case may be) may give notice to the promoters to lower or otherwise alter the position of the said mains or pipes, tubes, wires, or apparatus in such manner as may be considered necessary, and any difference as to the necessity of any such lowering or alteration shall be settled in manner provided by this Act for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit, and under the superintendence of such company or person or of their surveyor or engineer if they or he think fit to attend, after receiving not less than 48 hours notice for that purpose, which notice the promoters are hereby required to give :

2. The promoters shall not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or other works belonging to or controlled by any such company or person, or do anything to impede the passage of water or gas or the telegraphic or other communication into or through such mains or pipes, without the

consent of such company or person, or in any other manner than such company or person shall approve, until good and sufficient mains, pipes, valves, syphons, plugs, and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communication, as sufficiently as the same was supplied by the mains or pipes, tubes, wires, or apparatus proposed to be removed or displaced, shall at the expense of the promoters have been first made and laid down in lieu thereof and ready for use, and to the satisfaction of the surveyor or engineer of such water or gas or other company, or of such person, or, in case of disagreement between such surveyor or engineer and the promoters, as an engineer appointed by the Board of Trade shall direct :

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3. The promoters shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas or other company, or relating to telegraphs :
4. The promoters shall make good all damage done by them to property belonging to or controlled by any such company or person, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property, or with the private service pipes of any person supplied by any such company or person with water or gas :
5. If by any such operations as aforesaid the promoters interrupt the supply of water or gas in or through any main or main pipe they shall be liable to a penalty not exceeding £20 for every day upon which such supply shall be so interrupted.

XXXI. Where in any district any tramway or any work connected therewith interferes with any sewer, For protection of sewers, &c.

**Part IX.** drain, watercourse, subway, defence, or work in such district, or in any way affects the sewerage or drainage of such district, the promoters shall not commence any tramway or work until they shall have given to the proper authority 14 days previous notice in writing of their intention to commence the same, by leaving such notice at the principal office of such authority with all necessary particulars relating thereto, nor until such authority shall have signified their approval of the same, unless such authority do not signify their approval, disapproval, or other directions within 14 days after service of the said notice and particulars as aforesaid, and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted works, in such manner as such authority shall reasonably require, for the proper protection of and for preventing injury or impediment to the sewers and works hereinbefore referred to, by or by reason of the tramways, and shall save harmless the said authority against all and every the expense to be occasioned thereby; and all such works shall be done under the direction, superintendence, and control of the engineer or other officer or officers of the said authority, at the reasonable costs, charges, and expenses in all respects of the promoters; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the costs, charges, or expenses of the promoters, under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority and be maintained by them as any sewers or works.

Rights of  
authorities  
and com-  
panies, &c.,  
to open  
roads.

XXXII. Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other

power vested in any local authority or road authority **Cap. XXIX.**  
for any of the purposes for which such authority is  
respectively constituted, or in any company, body, or  
person for the purpose of laying down, repairing, alter-  
ing, or removing any pipe for the supply of gas or  
water, or any tubes, wires, or apparatus for telegraphic  
or other purposes, but in the exercise of such power  
every such local authority, road authority, company,  
body, or person shall be subject to the following re-  
strictions; (that is to say,)

1. They shall cause as little detriment or inconvenience to the promoters and lessees as circumstances admit :
2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given 18 hours at least before the commencement of the work :
3. They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid :
4. Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there : Provided that such work shall always be completed by the local authority or the road

**Part IX.**

authority, as the case may be, with all reasonable expedition :

5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work ; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: Provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters.

Difference  
between  
promoters  
and road  
authority,  
&c.

XXXIII. If any difference arises between the promoters or lessees on the one hand and any local authority or road authority, or any gas or water company, or any company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned, or with respect to any

other subject or thing regulated by or comprised in this Cap. XXIX. Act, the matter in difference shall (unless otherwise specially provided by this Act) be settled by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs.

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### PART III.

#### GENERAL PROVISIONS.

##### *Carriages.*

XXXIV. The promoters of tramways authorized by special Act and their lessees may use on their tramways Power for promoters to use tramways with flange-wheeled carriages, &c. carriages with flange wheels or wheels suitable only to run on the rail prescribed by such Act; and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rail.

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only.

No carriage used on any tramway which is hereafter authorized by special Act shall extend beyond the outer edge of the wheels of such carriage more than 11 inches on each side.

##### *Licenses to use Tramways.*

XXXV. If at any time after any tramway or part of any tramway shall have been for 3 years opened for public traffic in any district it shall be represented in writing to the Board of Trade by the local authority Licenses to use the tramway may in certain events be granted

**Part IX.**  
to third parties by the Board of Trade.

of such district, or by 20 inhabitant ratepayers of such district, or by the road authority of any road in which such tramway or part of a tramway is laid, that the public are deprived of the full benefit of the tramway, the Board of Trade may (if they consider that, *prima facie*, the case is one for inquiry) direct an inquiry by a referee under this Act into the truth of the representation, and if the referee report that the truth of the representation has been proved to his satisfaction, the board may from time to time grant licenses to any company or person to use such tramway in addition to the promoters or their lessees, for such traffic as is authorized by the special Act, with carriages to be approved by the board, subject to the following provisions, conditions, and restrictions; that is to say,

1. The license shall be for any period not less than 1 year nor more than 3 years from the date of the license, but shall be renewable by the board if they upon inquiry think fit:
2. The license shall be to use the whole of such tramway for the time being opened for public traffic, or such part or parts of such tramway as the board, having reference to the cause for granting the license, shall think right.
3. The license shall direct the number of carriages which the licensee or licensees shall run upon such tramway, and the mode in which and times at which such carriages shall be run:
4. The licenses shall specify the tolls to be paid to the promoters or to their lessees by the licensee or licensees for the use of the tramways:
5. The licensee or licensees, and their officers and servants, shall permit one person duly authorized for that purpose by the promoters, or by their lessees, to ride free of charge in or upon each carriage of the licensee or licensees run upon the tramways for the whole or any part of the journey:

6. The Board of Trade may at any time after the **Cap. XXIX.** granting of any license revoke, alter, or modify the same for good cause shown to them.

XXXVI. If on demand any licensee fail to pay the tolls due in respect of any passengers carried in any carriage it shall be lawful for the promoters or their lessees, to whom the same are payable, to detain and sell such carriage, or if the same shall have been removed from the tramway or premises of such promoters or lessees, to detain and sell any other carriages on such tramway or premises belonging to such licensee, and out of the monies arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus (if any) of such monies and such of the carriages as shall remain unsold to the person entitled thereto.

In default of payment of tolls licensee's carriages may be detained and sold.

XXXVII. Every licensee shall on demand give to an officer or servant authorized in that behalf by the promoters or their lessees entitled to be paid tolls by such licensee, an exact account in writing signed by such licensee of the number of passengers conveyed by any and every carriage used by him on the tramways.

Licenses to give account of passengers carried by them.

XXXVIII. If any such licensee fails to give such account to such officer or servant demanding the same as aforesaid, or if any such licensee with intent to avoid the payment of any tolls gives a false account, he shall for every such offence forfeit to the promoters, or to their lessees entitled to be paid tolls by such licensee, a sum not exceeding £5, and such penalty shall be in addition to any tolls payable in respect of the passengers carried by any such carriage.

Licenses not giving account of passengers carried liable to penalty.

XXXIX. If any dispute arise concerning the amount of the tolls due to the promoters or to their lessees

Disputes as to amount of toll to be



**Part IX.** from any licensee, or concerning the charges occasioned  
settled by by any detention or sale of any carriage under the  
justice. provisions herein contained, the same shall be settled  
in England by two justices, and in Scotland by the  
sheriff or two justices, and it shall be lawful for the  
promoters or their lessees in the meanwhile to detain  
the carriage, or (if the case so require) the proceeds of  
the sale thereof.

**Owners of** **XL.** Every licensee shall be answerable for any tres-  
**carriages** pass or damage done by his carriages or horses, or by  
**liable for** any of the servants or persons employed by him, to or  
**damage done** upon the tramway, or to or upon the property of any  
**by their** other person, and, without prejudice to the right of  
**servants.** action against the licensee or any other person, every  
such servant or other person may lawfully be convicted  
of such trespass or damage in England before two  
justices, and in Scotland before the sheriff or two  
justices, either by the confession of the party offending  
or by the oath of some credible witness: and upon such  
conviction every such licensee shall pay to the pro-  
moters, lessees, or persons injured, as the case may be,  
the damage, to be ascertained by such justices, so that  
the same do not exceed £50.

### *Discontinuance of Tramways.*

**Trainways to** **XLI.** If at any time after the opening of any tram-  
**be removed in** way in any district for traffic the promoters discontinue  
**certain cases.** the working of such tramway, or of any part thereof,  
for the space of 3 calendar months (such discon-  
tinuance not being occasioned by circumstances beyond  
the control of such promoters, for which purpose the  
want of sufficient funds shall not be considered a cir-  
cumstance beyond their control), and such discontinu-  
ance is proved to the satisfaction of the Board of Trade,  
the said board, if they think fit, may by order declare  
that the powers of the promoters in respect of such

tramway or the part thereof so discontinued shall, from the date of such order, be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority in manner by this Act provided. Where any such order has been made, the road authority of such district may at any time after the expiration of two months from the date of such order, under the authority of a certificate to that effect by the Board of Trade, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to the road authority the cost of such removal and of the making good of the road by the road authority, such cost to be certified by the clerk for the time being, or by some authorized officer of the road authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of tramway removed, either by public auction or private sale, and for such sum or sums, and to such person or persons, as the road authority may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

Cap. XXIX.

#### *Insolvency of Promoters.*

XLII. If at any time after the opening of any tramway in any district for traffic, it appears to the local authority or the road authority of such district that the promoters of such tramway are insolvent, so that they are unable to maintain such tramway, or work the same with advantage to the public, and such road

Proceedings  
in case of  
insolvency of  
promoters.

**Part IX.**

authority makes a representation to that effect to the Board of Trade, the Board of Trade may direct an inquiry by a referee into the truth of the representation, and if the referee shall find that the promoters are so insolvent as aforesaid, the Board of Trade may, by order, declare that the powers of the promoters shall, at the expiration of 6 calendar months from the making of the order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided; and thereupon such road authority may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for recovery of such costs, in every respect as in cases of removal under the next preceding section.

*Purchase of Tramways.*

Future purchase of undertaking by local authority.

**XLIII.** Where the promoters of a tramway in any district are not the local authority, the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within 6 months after the expiration of a period of 21 years from the time when such promoters were empowered to construct such tramway, and within 6 months after the expiration of every subsequent period of 7 years, or within 3 months after any order made by the Board of Trade under either of the two next preceding sections, with the approval of the Board of Trade, by notice in writing require such promoters to sell, and thereupon such promoters shall sell to them their undertaking or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tram-

way, and all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district, such value to be in case of difference determined by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all the rights, powers, and authorities of such promoters in respect to the undertaking sold, or where any order has been made by the Board of Trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such order in respect to the undertaking sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon them by a provisional order under this Act, and in reference to the same they shall be deemed to be the promoters. Cap. XXIX.

No such resolution shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meeting of such local authority are usually given, nor unless two-thirds of the members constituting such local authority are present and vote at the meeting, and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two-thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two-thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than 3 weeks and not more than 6 weeks thereafter; and it shall be lawful

**Part IX.** for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from time to time.

The local authority in any district may pay the purchase money and all expenses incurred by them in the purchase of any undertaking under the authority of this section out of the like rate, and shall have the like powers to borrow on the security of the same as if such expenses were incurred in applying for, obtaining, and carrying into effect any provisional order obtained by them under this Act.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase money and expenses, the Board of Trade may by provisional order extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase money and expenses.

Every such provisional order shall be confirmed in like manner as a provisional order under the authority of Part I. of this Act, and until such confirmation such provisional order shall not have any operation.

Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their districts.

**Power of sale.**

**XLIV.** Where any tramway in any district has been opened for traffic for a period of six months the promoters may, with the consent of the Board of Trade, sell their undertaking to any person, persons, corporation, or company, or to the local authority of such district; and when any such sale has been made all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, corporation, company, or local authority to whom the same has

been sold, in like manner as if such tramway was constructed by such person, persons, corporation, company, or local authority under the powers conferred upon them by special Act, and in reference to the same they shall be deemed to be the promoters. Cap. XXIX.

Provided always that a local authority shall not purchase any undertaking under the provisions of this section unless they shall decide to make such purchase by resolution passed at a special meeting of the members constituting such local authority, which resolution shall be made in the same manner and shall be subject to the same conditions as to validity as resolutions made in regard to the purchases by the next preceding section authorized.

Where any purchase is made by any local authority under the provisions of this section, such local authority may pay the purchase money and all expenses incurred by them in making such purchase out of the like funds, and for such purposes shall have all and the like powers and be subject to all the like conditions as if such purchase were made under the authority of the next preceding section.

#### *Tolls.*

XLV. The promoters or lessees of a tramway authorized by special Act may demand and take, in respect of such tramway, tolls and charges not exceeding the sums specified in such special Act, subject and according to the regulations therein specified. A list of all the tolls and charges authorized to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways. Tolls, &c.

#### *Bye-laws.*

XLVI. Subject to the provisions of the special Act authorizing any tramway and this Act, Bye-laws  
by local  
authority.

**Part IX.**

The local authority of any district in which the same is laid down may, from time to time, make regulations as to the following matters :

The rate of speed to be observed in travelling upon the tramway :

The distances at which carriages using the tramway shall be allowed to follow one after the other :

The stopping of carriages using the tramway :

The traffic on the road in which the tramway is laid :

Promoters  
may make  
certain  
regulations.

The promoters of any tramway and their lessees may from time to time make regulations,—

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them :

For regulating the travelling in or upon any carriage belonging to them.

And for better enforcing the observance of all [or any of such regulations, it shall be lawful for such local authority and promoters respectively to make bye-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such bye-laws, and make new bye-laws, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect.

Notice of the making of any bye-law under the provisions of this Act shall be published by the local authority or the promoters making the same by advertisement, according to the regulations contained in Part II. of the schedule (C.) to this Act annexed, and unless such notice is published in manner aforesaid such bye-law shall be disallowed by the Board of Trade.

No such bye-law shall have any force or effect which shall be disallowed by the Board of Trade within two calendar months after a true copy of such bye-law shall have been laid before the board, and a true copy of every such proposed bye-law shall, not less than two

calendar months before such bye-law shall come into operation, be sent to the Board of Trade, and shall be delivered to the promoters of such tramway if the same was made by the local authority, and to such local authority if made by the promoters. Cap. XXIX.

XLVII. Any such bye-law may impose reasonable penalties for offences against the same, not exceeding 40s. for each offence, with or without further penalties for continuing offences, not exceeding for any continuing offence 10s. for every day during which the offence continues; but all bye-laws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid. Penalties may be imposed in bye-laws.

XLVIII. The local authority shall have the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages using the tramways, and to all drivers, conductors, and other persons having charge of or using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to hackney carriages, and the drivers and other persons having the charge thereof, and to the standings for the same in the streets and district of or under the control of the local authority: Provided always, that in any district in which any of the powers aforesaid in relation to hackney carriages and the matters aforesaid in connexion therewith are vested in any authority other than the local authority of such district, such authority shall have and may exercise the powers by this section conferred upon the local authority. Power to local authority to license drivers, conductors, &c.

#### *Offences.*

XLIX. If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing Penalty for obstruction of promoters in laying out tramway.



**Part IX.** a tramway, or defaces or destroys any mark made for the purpose of setting out the line of the tramway, or damages or destroys any property of any promoters, lessees, or licensees, he shall for every such offence be liable to a penalty not exceeding £5.

Penalties for wilful injury or obstruction to tramways, &c.

L. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,)

Interferes with, removes, or alters any part of a tramway or of the works connected therewith;

Places or throws any stones, dirt, wood, refuse or other material on any part of a tramway;

Does or causes be done anything in such manner as to obstruct any carriage using a tramway, or to endanger the lives of persons therein or thereon;

Or knowingly aids or assists in the doing of any such thing;

he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding £5.

Penalty on passengers practising frauds on the promoters.

LI. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding 40s.

Transient offenders.

LII. It shall be lawful for any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, to seize and detain any

person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant until such person can be conveniently taken before a justice, or until he be otherwise discharged by due course of law. Cap. XXIX.

LIII. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding £20 for every such offence, and it shall be lawful for such promoters or lessees to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact. Penalty for bringing dangerous goods on the tramway.

LIV. If any person (except under a lease from or by agreement with the promoters, or under license from the Board of Trade, as by this Act provided) uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway (a), such person shall for every such offence be liable to a penalty not exceeding £20. Penalty for persons using tramways with carriages with flange wheels, &c.

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(a) An omnibus proprietor attached to his omnibus a lever with arms, having a small revolving disc, which the driver could let into the groove of the tram-rail, at the side of each forewheel, when on the tramway, thus operating as a flange at the point of contact of the wheels with the rail—*Held*, that this was within the prohibition contained in sect. 54 of the Tramway Act, 1870, *Cottam v. Guest*, L. R. 6 C. P. D. 70; 50 L. J. C. P. 174.

Part  

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*Miscellaneous.*

Promoters or  
lessees to  
be respon-  
sible for all  
damages.

LV. The promoters or lessees, as the case may be, shall be answerable for all accident, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries.

Recovery  
of tolls,  
penalties, &c.

LVI. All tolls, penalties, and charges under this Act, or under any bye-law made in pursuance of this Act, may be recovered and enforced as follows: in England before two justices of the peace in manner directed by the Act of 11 & 12 Vict. c. 43, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same, and in Scotland before the sheriff or two justices as penalties under The Railways Clauses Consolidation (Scotland) Act, 1845.

Right of  
user only.

LVII. Notwithstanding anything in this Act contained the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway, nor shall anything contained in this Act exempt the promoters of any tramway laid along any turnpike road, or any other person using such tramway, from the payment of such tolls as may be levied in respect of the use of such road by the trustees thereof.

**LVIII.** The trustees of any turnpike road and the promoters of any tramway proposed to be laid or laid along the same may, with the approval of the Board of Trade, enter into agreements with each other for the payment of a composition to such trustees in respect of the user of such road for such tramway and the conveyance of traffic thereon, and may with the same approval alter such agreement from time to time.

Cap. XXIX.  
Arrangements  
between turn-  
pike road  
trustees and  
promoters.

**LIX.** Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramway shall be laid to work such mines and minerals, nor shall any such owner, lessee, or occupier be liable to make good or pay compensation for any damage which may be occasioned to such tramway by the working in the usual and ordinary course of their mines or minerals.

Reservation  
of rights of  
owners, &c.,  
of mines.

**LX.** Nothing in this Act shall take away or affect any power which any road authority, or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation.

Reserving  
powers of  
street autho-  
rities to  
widen, &c.,  
roads.

**LXI.** Nothing in this Act shall limit the powers of the local authority or police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters or of lessees as to the traffic of other persons.

Power for  
local or  
police autho-  
rities to  
regulate  
traffic in  
roads.

**LXII.** Nothing in this Act or in any bye-law made under this Act shall take away or abridge the right of

Reservation  
of right of

**Part IX.** the public to pass along or across every or any part of  
 public to use any road along or across which any tramway is laid,  
 roads. whether on or off the tramway, with carriages not  
 having flange wheels or wheels suitable only to run on  
 the rail of the tramway.

Regulating  
 inquiries be-  
 fore referee  
 appointed by  
 the Board of  
 Trade.

**LXIII.** Every inquiry which by this Act the Board of Trade are empowered to make or direct shall be made in accordance with the following provisions:

1. The inquiry shall be held in public before an officer to be appointed in that behalf by the board, hereinafter called the referee, and whose appointment shall be by writing, which shall specify all the matters referred to him:
2. Ten days notice at the least shall be given by the referee to the parties upon whose representation the Board of Trade shall have directed the inquiry, of the time and place at which the inquiry is to be commenced:
3. The inquiry shall be commenced at the time and place so appointed, and the referee may adjourn the inquiry from time to time as may be necessary to such time and place as he may think fit:
4. The referee by summons shall, on the application of any party interested in the inquiry, require the attendance before himself, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend the referee, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding £5; Pro-

vided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than 10 miles from his place of abode: Cap. XXIX.

5. The referee may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice, to any person tendered or summoned as a witness on the inquiry:
6. Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury:
7. The referee shall make his report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

LXIV. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters: Rules for carrying Act into effect (a).

1. The proceedings to be had before the Board under this Act:
2. The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits:
3. The plans and sections of any works to be deposited by promoters under this Act:
4. As to any other matter or thing in respect of which it may be expedient to make rules

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(a) See Rules, *post*, p. 438.

**Part IX.**  

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for the purpose of carrying this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within 3 weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting within 3 weeks after the beginning of the then next session of Parliament.

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## SCHEDULE A.

## Cap. XXIX.

## PART I.

| Districts of Local Authorities.                                                                                                                                                                                | Description of Local Authority of District set opposite its Name.                                                                                                               | The Local Rate.                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ENGLAND AND WALES.</b>                                                                                                                                                                                      |                                                                                                                                                                                 |                                                                                                                                                                     |
| The City of London and the liberties thereof.                                                                                                                                                                  | The mayor, aldermen and Commons of the City of London.                                                                                                                          | The consolidated sewers rate.                                                                                                                                       |
| The metropolis (1.) -                                                                                                                                                                                          | The Metropolitan Board of Works.                                                                                                                                                | The metropolitan consolidated rate.                                                                                                                                 |
| Boroughs (2.) -                                                                                                                                                                                                | The mayor, aldermen and burgesses, acting by the council.                                                                                                                       | The borough fund or other property applicable to the purposes of a borough rate, or the borough rate.                                                               |
| Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any Local Act with powers of improving, cleansing or paving any town.   | The commissioners, trustees, or other persons intrusted by the Local Act with powers of improving, cleansing, or paving the town.                                               | Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town. |
| Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts. | The local board -                                                                                                                                                               | General district rate.                                                                                                                                              |
| Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.                                                                                          | The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry. | The poor rate.                                                                                                                                                      |

*Notes.*

(1.) "The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, except the City of London and the liberties thereof.

(2.) "Borough" shall mean any place for the time being subject to 5 & 6 Will. 4, c. 76, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales."



**Part IX.**

| Districts of Local Authorities.                                                                                                                                                      | Description of Local Authority of District set opposite its name.                                     | The Local Rate.                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| <b>SCOTLAND.</b>                                                                                                                                                                     |                                                                                                       |                                                                                   |
| Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees,                                                | The town council -                                                                                    | The prison assessment or police assessment, as the local authority shall resolve. |
| In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or Local Act.                               | The police commissioners or trustees.                                                                 |                                                                                   |
| In any parish or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend. | The road trustees having the management of any road on which a tramway is proposed to be constructed. | The tolls, duties, and assessments levied by the road trustees.                   |

**PART II.**

| Districts of Road Authorities.                                                                                                              | Description of Road Authority of District set opposite its Name.                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| Parishes within the metropolis (1.) mentioned in schedule (A.) to the Metropolis Management Act, 1855.                                      | The vestries appointed for the purposes of the Metropolis Management Act, 1855.                       |
| Districts within the metropolis (1.) formed by the union of the parishes mentioned in schedule (B.) to the Metropolis Management Act, 1855. | The board of works for the district appointed for the purpose of the Metropolis Management Act, 1855. |

*Note. (1).—The term "Metropolis" has in this Part the same meaning as in Part I. of this schedule.*

## PART III.

## Cap. XXIX.

*Approval of Application by Local Authority for a Provisional Order (a).*

The approval of any intended application for a provisional order by a local authority shall be in manner following; that is to say,

A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting such local authority.

Such special meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given.

Such resolution shall not be passed unless two-thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting, concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two-thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two-thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than 3 weeks and not more than 6 weeks thereafter. Where any such resolution relating to the metropolis as the same is defined in Part I. of the schedule, or to any district in Scotland of which road trustees are the local authority, has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved.

## SCHEDULE B.

## PROVISIONAL ORDERS.—PART I.

*Advertisement in October or November of intended application (b).*

- (1.) Every advertisement is to contain the following particulars:
1. The objects of intended application.
  2. A general description of the nature of the proposed works, if any.
  3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed works, if any, will be made.

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(a) See *post*, p. 439.

(b) See *post*, p. 440.

**Part IX.**

4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order, when deposited, and of the provisional order, when made, will be obtainable as hereinafter provided.
- (2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.
- (3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.
- (4.) The advertisement is also, in every case, to be inserted at least in the *London or Edinburgh Gazette*, accordingly as the district is situate in England or Scotland.

**PART II.***Deposit on or before 30th November (a).*

- (1.) The promoters are to deposit—
  1. A copy of the advertisement published by them.
  2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.
- (2.) The documents aforesaid are to be deposited for public inspection—
 

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish and the office of the local authority of every district in or through which any such undertaking is proposed to be made; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.
- (3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

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(a) See *post*, p. 443.

## PART III.

Cap. XXIX*Deposit on or before 23rd December (b).*

- (1.) The promoters are to deposit at the office of the Board of Trade—
1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a provisional order.
  2. A printed draft of the provisional order as proposed by the promoters, with any schedule referred to therein.
  3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.
- (2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.
- (3.) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:

*[Short title of undertaking.]*

To the Board of Trade.

The memorial of the promoters of *[short title of undertaking]*:

Sheweth as follows:

1. Your memorialists have published, in accordance with the requirements of the Tramways Act, 1870, the following advertisement:

*[Here advertisement to be set out verbatim.]*

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and *[here state deposit of the several matters required by Act]*.

Your memorialists, therefore, pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

*A.B.**C.D.*

Promoters.

## PART IV.

*Deposit and advertisement of Provisional Order when made (c).*

- (1.) The promoters are to deposit printed copies of the provisional order, when settled and made for public inspection in the offices of clerks of the peace and sheriff

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(b) See *post*, p. 446.

(c) See *post*, p. 451.

**Part. IX.**

- clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.
- (2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than each.
  - (3.) They are also to publish the provisional order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or, in case the same shall no longer be published, in some other newspaper published in the district.

**SCHEDULE C.****PART I.***Notice and Deposit of Lease by Local Authority.*

One month before any lease is submitted to the Board of Trade, notice of the intention to make such lease shall be given by advertisement.

- (1.) Every advertisement is to contain—
  - 1. The term of the lease,
  - 2. The rent reserved.
  - 3. A general description of the covenants and conditions contained therein.
  - 4. The place where the same is deposited for public inspection.
- (2.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed lease; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.
- (3.) The advertisement is also, in every case, to be inserted once at least in the *London or Edinburgh Gazette*, accordingly as the district to which it relates is situate in England or Scotland.

*Deposit.*

A copy of such lease shall be deposited for public inspection during office hours at the office of the local authority or at some other convenient place within the district to which such lease relates.

## PART II.

*Notice of Bye-Laws.*

Within one month after the making of any bye-law notice of the making of the same, and a copy of such bye-law, shall be published by advertisement in manner following :

- (1.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such bye-law ; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate ; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.
  - (2.) The advertisement is also, in every case, to be inserted once at least in the *London* or *Edinburgh Gazette*, accordingly as the district to which it relates is situate in England or Scotland.
-

Part IX.

*The following has been obtained from the office of the Board of Trade.]*

## THE TRAMWAYS ACT, 1870.

33 & 34 VICT. CAP. 78.

## BOARD OF TRADE RULES

WITH RESPECT TO PROVISIONAL ORDERS UNDER THE  
ABOVE-MENTIONED ACT, WITH COPY OF A PORTION  
OF THE ACT.

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## NOTES.

(1.) *Alterations or additions to the Rules for Session 1881 are underlined.*

(2.) *All memorials, objections, and other documents should be on paper of foolscap size.*

(3.) *Promoters who desire to be incorporated must register themselves under the Companies Act, 1862.*

## Cap. XXIX.

BY WHOM PROVISIONAL ORDERS MAY BE OBTAINED AND  
THE NECESSARY CONSENTS THERETO.

By the Tramways Act, 1870, it is provided as follows: By whom pro-

PART I.—Provisional orders authorizing the con- may be ob-  
struction of tramways. tained and the

[Here is set out part of sect. 4 of the Act which, see necessary con-  
*ante*, p. 392.] sents thereto.

[Parts I. and II. of sched. A.—(Part I.) are then  
set out which, see *ante*, pp. 431, 432.]

See also sect. 3 of the Act in which the term “road Definition of  
authority” is defined to mean, in the districts specified local and road  
in the table in Part II. of the schedule (A.) to the Act, authorities.  
the bodies of persons named in the same table, and  
elsewhere any local authority, board, town council,  
body corporate, commissioners, trustees, vestry, or other  
body or persons in whom a road as defined by this  
Act, is vested, or who have the power to maintain or  
repair such road.

[Sched. A.—(Part III.) of the Act is then set out Evidence of  
which, see *ante*, p. 433.] approval and  
consent.

BOARD OF TRADE RULE I.—Where the application is Approval of  
made by any local authority, the evidence of approval application  
required as above by sched. A. (Part III.) of the Act made by local  
must be given by furnishing at the time fixed for authorities.  
proving compliance with the Act and these rules, a  
certified copy of the resolution approving of the inten-  
tion to make the application and of the notice con-  
vening the special meeting to consider the application,  
together with a certified statement of the number of  
members constituting the local authority, and of the  
number present and voting at such special meeting.

RULE II.—Where an application is made by pro- Consent to  
motors, not being the local authority of the district in applications  
which the tramway is proposed to be laid, evidence of not made by  
local autho-  
rities,



**Part IX.**

the consent required by Part I. sect. 4 of the Act must be given by furnishing at the time fixed for proving compliance with the Act and these rules, a certified copy of the resolution passed at a meeting of the local or road authority, as the case may be, at which the application was approved, together with a copy of the notice convening the meeting, which notice must contain a statement that the subject of the proposed tramway will be brought before the meeting.

**ADVERTISEMENT AND NOTICES IN OCTOBER OR  
NOVEMBER AND DECEMBER.**

Advertisement  
and notices  
of intended  
application  
and deposits.  
Contents of  
advertisement  
of intended  
application.  
Description of  
tramways in  
advertisement.

[Sect. 6 of the Act sub-sects. 1, 2, and 3 are then set out which, see *ante*, p. 393.]

[Schedule B.—(Part I.) of the Act is then set out which, see *ante*, p. 433.]

**RULE III.**—The tramways mentioned in the advertisement of the intended application should be described in the manner prescribed in Rule XVII., but the length need not be inserted.

Advertisement  
as to narrow  
places.

**RULE IV.**—The advertisement of the intention of the promoters to make application for a provisional order in pursuance of sect. 6 of the Act, must comply with the following standing order :

Standing order No. 6 of the House of Lords and of the House of Commons for session 1881.

“In cases of bills for laying down a tramway in any street, the notices shall specify at what point or points, and on which side of the street, it is proposed to lay such tramway so that for a distance of 30 feet or upwards a less space than nine feet six inches, or if it is intended to run thereon carriages or trucks adapted for use upon railways, a less space than ten feet six inches shall intervene between the outside of the footpath on the side of the road and the nearest rail of the tramway.”

**RULE V.**—Notices must also be posted in the streets in compliance with the following standing order : **IX.**

Standing order No. 10 of the House of Lords and of the House of Commons for session 1881.

Street notices.

“ In the months of October and November, or one of them, immediately preceding the application for any bill for laying down a tramway, notice thereof shall be posted for 14 consecutive days in any street or streets along which it is proposed to lay the tramway, in such manner as the authority having the control of such street or streets shall direct; and if after application to such authority no such direction shall be given, then in some conspicuous position in such street or streets; and such notice shall also state the place or places at which the plans of such tramways will be deposited.”

**RULE VI.**—The promoters must comply with the following standing order :

Standing order No. 13 of the House of Lords and of the House of Commons for session 1881.

Notice to owners and lessees of railways, tramways, and canals.

“ On or before the 15th day of December immediately preceding the application for any bill for laying down a tramway crossing any railway or tramway on the level, or crossing any railway, tramway, or canal by means of a bridge, or otherwise affecting or interfering with such railway, tramway, or canal, notice in writing of such application shall be served upon the owner or reputed owner and upon the lessee or reputed lessee of such railway, tramway, or canal, and such notice shall state the place or places at which the plans of the tramway to be authorized by such bill have been or will be deposited.”

Similar notice must also be given to county justices and to proprietors of navigable rivers in respect of their bridges or other works which are proposed to be crossed or otherwise interfered with.

Part IX.

Every notice under this rule must be accompanied by a copy of Rule XVIII., omitting the first paragraph, and must state where copies of the draft provisional order, when deposited at the Board of Trade, can be obtained.

Intimation to  
intending  
objectors.

RULE VII.—The preceding advertisement and notices, other than the street notices, must state that every company, corporation, or person desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter, addressed to the assistant secretary of the railway department of the Board of Trade, *on or before the 15th January* next ensuing; that copies of their objections must at the same time be sent to the promoters; and that in forwarding to the Board of Trade such objections, the objectors or their agents should state that a copy of the same has been sent to the promoters or their agents.

Notice to  
frontagers.

RULE VIII.—The promoters must comply with the requirements of the following standing order; and the notice therein referred to must contain a notification that if such owner, lessee, or occupier dissents from the tramway being so laid, he may express his dissent by a statement in writing, addressed to the assistant secretary of the railway department of the Board of Trade, on or before the 1st January next ensuing, and that he must at the same time send a copy of his dissent to the promoters.

Standing order No. 13 of the House of Lords and of the House of Commons for session 1881.

“On or before the 15th day of December immediately preceding the application for a bill for the laying down a tramway, notice in writing shall be given to the owners or reputed owners, lessees or reputed lessees, and occupiers of all houses, shops, or warehouses abutting upon any part of any high-

way where, for a distance of 30 feet or upwards, Cap. XXIX. it is proposed that a less space than nine feet six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway, or a less space than ten feet six inches, if it is intended to run on the tramway carriages or trucks adapted for use upon railways."

Note.—This notice should be given in respect of such premises on both sides of the road.

#### DEPOSITS ON OR BEFORE 30TH NOVEMBER.

. [SCHED. B., (PART II.), of this Act is here set out, Deposits on 30th November. which see *ante*, p. 434.]

**RULE IX.**—A published map of the district on a scale of not less than six inches to a mile (or if none is published then the best map obtainable), with the line of the proposed tramway marked thereon, and a diagram on a scale of not less than two inches to a mile prepared in accordance with the specimen appended to these Rules must also be deposited at the Board of Trade on or before the 30th November.

**RULE X.**—The following rules must also be observed with respect to the plans and sections :— Description of plans and sections.

- (1.) All lengths to be stated on the plan and section in miles, furlongs, chains, and decimals of a chain.
- (2.) The distances in miles and furlongs from one of the termini of each tramway to be exhibited on the plan and section.
- (3.) Each double portion of a tramway, whether a passing-place or otherwise, to be indicated by a double line.
- (4.) The total length of the road upon which each tramway is to be laid to be stated (*i.e.* the length of route of each tramway).

**Part IX.**

- (5.) The length of each double and single portion of such tramway, and the total length of such double and single portions respectively to be also stated.

In the case of double lines (including passing-places), the distance between the centre lines of each line of tramway should be marked on the plans. This distance must in all cases be sufficient to leave at least 15 inches between the sides of the widest carriages and engines to be used on the tramways when passing one another.

- (6.) The gradients of the road on which each tramway is to be laid to be shown on the section.
- (7.) Every crossing of a railway, tramway, river or canal to be shown, specifying in the case of railways and tramways whether they are crossed over, under, or on the level.
- (8.) All tidal waters to be coloured blue.
- (9.) All places where for a distance of 30 feet and upwards there will be a less space than the statutory width of nine feet six inches referred to in Rule VIII. must be marked by a thick dotted line on the plans on the side or sides of the line of tramway where such narrow places occur, as well as noticed in the description, and the width of the road at these places should also be marked on the plans.

Plans to  
show narrow  
places, &c.

**RULE XI.**—The plans to be deposited must also comply with the following standing order :—

Standing order No. 45 of the House of Lords and of the House of Commons for session 1881.

“ In cases of bills for laying down a street tramway, the plans shall indicate whether it is proposed to lay such tramway along the centre of any street, and if not along the centre, then on which side of, and at what distance, from an imaginary line drawn along the centre of such street, and whether or not, and if so, at what point or points, it is pro-

posed to lay such tramway, so that for a distance of **Cap. XXIX.**  
 30 feet or upwards a less space than nine feet  
 six inches, or if it is intended to run thereon car-  
 riages or trucks adapted for use upon railways, a  
 less space than ten feet six inches, shall intervene  
 between the outside of the footpath on either side  
 of the road, and the nearest rail of the tramway."

In other respects the plans and sections to be deposited  
 must be such and so many plans and sections as would  
 be required by the standing orders for the time being  
 of the Houses of Parliament if the promoters instead of  
 applying for a provisional order were proceeding by  
 private bill.

**RULE XII.**—The documents required by Part II. of  
 schedule B. to be deposited for public inspection in the  
 office of the parish clerk of every parish, shall, in the  
 case of any extra-parochial place, be deposited with  
 the parish clerk of some parish immediately adjoining  
 thereto, or, in the case of any place within the limits of  
 the metropolis, as defined by the 18th and 19th Vict.  
 c. 120, intituled "An Act for the better local manage-  
 ment of the Metropolis," except the city of London,  
 with the clerk of the vestry of each parish in schedule  
 A., and with the clerk of the district board of parishes  
 in schedule B. of the said Act. Extra-paro-  
chial places.

**RULE XIII.**—The plans to be deposited with the clerk  
 of the peace or sheriff clerk (as the case may be) must  
 be in duplicate. (See standing order No. 24 of the  
 House of Lords and of the House of Commons for  
 session 1881.) Plans in  
certain cases  
to be in  
duplicate.

**RULE XIV.**—In every case in which the proposed  
 works are intended to be made in or through one or more  
 parishes or districts, the deposit with the parish clerks  
 or local authorities of a copy of so much only of the  
 plans and sections as relates to their respective parishes  
 or districts shall be necessary. Portions only  
of plans  
required in  
certain cases.

**Part IX.**  
Plans, &c.,  
to be depo-  
sited in  
parliament.

**RULE XV.**—The following standing orders must also be complied with (a) :—

Standing order of the House of Lords, No. 39, for session 1881.

“ Whenever plans, sections, or books of reference are deposited in the case of an application to any public department for a provisional order or certificate, duplicates of the said documents shall at the same time be deposited in the office of the clerk of the parliaments, provided that with regard to such deposits as are so made at any public department after the prorogation of parliament and before the 30th day of November in any year, such duplicates shall be so deposited on the 30th day of November.”

Standing order of the House of Commons, No. 39, session 1881.

“ Whenever plans, sections, or books of reference are deposited in the case of an application to any public department for a provisional order or provisional certificate, duplicates of the said documents shall at the same time be deposited in the private bill office, provided that with regard to such deposits as are so made at any public department after the prorogation of parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on the 30th day of November.”

#### DEPOSITS ON OR BEFORE 23RD DECEMBER.

Deposits on  
23rd Decem-  
ber.

[SCHED. B.—(Part III.)—of the Act is then set out, which see *ante*, p. 435 (b).]

(a) These standing orders refer to *amended* as well as to original plans, but not to the diagram mentioned in Rule IX.

(b) The advertisement referred to in this schedule, which is to be set out verbatim, may be in print, and pasted on to the body of the memorial.

**RULE XVI.**—The following documents, &c., must **Cap. XXIX.]**  
also be deposited at the Board of Trade on the 23rd  
December, viz. :

- (1.) A complete list of every railway, tramway, and canal proposed to be crossed or otherwise affected or interfered with, together with the names and addresses of the owners or reputed owners and lessees or reputed lessees thereof, and a certified copy of the notice served upon them. List of railways, tramways, and canals, and copy of the notice.
- (2.) A complete list of the local and of the (c) road authorities through whose districts the proposed tramway is to pass (including in such list the clerk to the justices in cases where it is proposed to cross county bridges), and if any such district is or forms part of a highway district, under the provisions of "The Highway Acts," a statement to that effect must accompany the deposit. List of local and road authorities.
- (3.) A certified copy of the notice which is required by Rule V. to be posted in the streets in October or November next before the application. Copy of street notice.
- (4.) In all cases where for a distance of 30 feet or upwards it is proposed that a less space than nine feet six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway, or a less space than ten feet six inches if it is intended to run on the tramway carriages or trucks adapted for use upon railways, a complete list of the owners or reputed owners, lessees or reputed lessees, and occupiers of all houses, shops, or warehouses abutting upon any part of the highway, where such less space List of frontagers and copy of notice.

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(c) See sect. 3 of the Act, *ante*, p. 392, for the definition of road authority.



## Part IX.

- is proposed, together with a certified copy of the notice which was served on them on or before the 15th December, as required by Rule VIII. (The list must specify each street separately and give the number or name of the house. If there is more than one objection in respect of any one house, such objections will be treated as one objection only in computing the number of objections on the part of owners and occupiers referred to in sect. 9 of the Act.)
- Description of land.** (5.) A description of the land (if any) which the promoters propose to purchase for the construction of the tramway. (The contracts for the purchase of all the lands required must be produced at the time fixed for proving compliance with the Act and these rules.)
- Memorandum of association, &c.** (6.) A list of every provisional order or Act of Parliament (if any) of the promoters; and where the promoters are a company incorporated under the Companies Act, 1862, a printed copy of the memorandum of association, articles of association, and any registered special resolution of the company, and in the case of a company incorporated in any other manner, a copy of every deed or instrument of settlement or incorporation.
- Fee.** (7.) A fee of £35, by cheque payable to "an assistant secretary of the Board of Trade." (This fee will not necessarily be taken to cover the cost of inquiries or other matters arising out of the application. With respect to costs in such matters, security must be given from time to time by the promoters as the Board of Trade may require.)

## DRAFT PROVISIONAL ORDER.

**RULE XVII.**—The following rules must be observed Form of draft  
provisional  
order.  
in regard to the draft provisional order :

- (1.) The draft provisional order must be deposited in triplicate and be printed on one side only of the page of paper, so as to leave the back of the page blank, and any schedule annexed must begin a new page.
- (2.) The draft provisional order must describe where each tramway is to commence and terminate, and must state the streets and roads along which it is to pass, and the total length of the double and single portions respectively of such tramway in miles, furlongs, chains, and decimals of a chain.
- (3.) Each double and single portion of such tramway, with its commencement and termination, must also be described. This can be done by stating that each line or branch line will be double throughout, except at certain defined places where it will be single, or *vice versa*.
- (4.) Every passing-place must be described as a double line in accordance with the standing order No. 131, of the House of Lords, viz., that "two lines of tramway running side by side shall be described as a double line."
- (5.) In cases where the promoters are individuals their addresses as well as names should be inserted in the draft order.
- (6.) The names and addresses of the agents of the provisional order must be printed on the outside of the draft order, and there must be a notice at the end of it stating that objections are to be addressed to the assistant secretary of the railway department of the Board of

**Part IX.**  

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Trade on or before the 15th January next ensuing, that copies of objections must at the same time be sent to the promoters, and that in forwarding to the Board of Trade such objections, the objectors or their agents should state that a copy of the same has been sent to the promoters or their agents.

**PROOFS OF COMPLIANCE WITH THE ACT AND RULES.**

Proofs of  
compliance  
with Act and  
rules.

**RULE XVIII.**—The agents should be prepared to prove compliance with the provisions of the Act and these rules by the 15th January, and all such proofs must be completed on or before the 22nd February. Six days' notice will be given of the day and hour at which the agents are to attend for the purpose at the Board of Trade, and printed forms of proof will accompany the notice. One of these forms shou'd be filled up by the agents, and brought with the requisite documents to the department at the time fixed for proof.

If any local or road authority, railway, tramway, or canal company, or any other company, body, or person desires to have any clauses or other amendments inserted in the order, they must deliver the same to the agents for the order, and also to the Board of Trade, on or before the 8th February: Provided that no such delivery shall prejudice the right of the party making such delivery to oppose the order.

On or before the 22nd February the agents must give to the Board of Trade a filled up draft printed order (in duplicate) containing in manuscript all such clauses or other amendments as have been agreed upon.

If any of the clauses or other amendments which have been delivered to the agents are not settled with the consent of both parties the agents must, so far as they can, on or before the 22nd February, show what are the amendments, if any, which each party would be willing to accept.

After the 22nd February no further proposals for Cap. XXIX. clauses will be entertained by the Board of Trade.

**DEPOSIT AND ADVERTISEMENT OF ORDER AS MADE (a).**

“Section 13.—When a provisional order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement according to the regulations contained in Part IV. of the Schedule (B.) to this Act.”

Sched. B.—(Part IV.) is here set out which, see *ante*, p. 435 (b).

**RULE XIX.**—When a provisional order has been made, and before it is introduced into the confirmation bill, the promoters will be required to submit to the Board of Trade the following proofs, viz. :

- (1.) The receipt of the clerk of the peace or sheriff clerk, or proof by affidavit of the deposit of the order with such officer as required by Part IV. of Schedule B. to the Act (*ante*, p. 435).
- (2.) A copy of the local newspaper containing the advertisement of the order. This advertisement must have a short heading stating that the order has been made by the Board of Trade under the Tramways Act, 1870, previous to its being introduced into a confirmation bill, and must also state the name of the office where printed copies of the order can be obtained, which must be the office

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(a) Section 14 of the Act requires that the order as made shall be deposited and advertised not later than the 25th April. Additional copies of the order can be obtained by the promoters from the Queen's printers, at their own expense, by an order of the Board of Trade, which will accompany the provisional order when delivered to the promoters.

(b) The Board of Trade consider that the price to be inserted in sub-sect. 2 of this schedule, *ante*, p. 436, should not be more than one shilling.

**Part IX.**

named in the original advertisement of the application for the order.

- (3.) Proof must also be given that the advertised order is a correct copy of the order delivered by the Board of Trade to be advertised, that it was inserted in the newspaper in which the original advertisement of the application for the order was published, and that a sufficient number of printed copies of the order have been deposited for sale at the office named in the original advertisement, with a statement of the price for which they may be obtained.

Printed forms for these proofs will be furnished by the Board of Trade when the order is sent to the promoters to be advertised, and one of these forms must be filled up by the promoters, and brought or forwarded to the department with the requisite documents as soon as possible after the advertisement and deposit have been made.

**DEPOSIT OF MONEY, PENALTY FOR NON-COMPLETION OF TRAMWAYS, AND FORFEITURE AND RELEASE OF DEPOSIT.**

Deposit of money in the chancery division under section 12 of Act.

**RULE XX.**—After the provisional order is ready, and before the same is introduced by the Board of Trade into a confirming bill the promoters (unless they are a local authority), shall, if they are not possessed of a tramway already opened for public traffic, which has during the year last past paid dividends on their ordinary share capital, pay as a deposit a sum of money not less than five per centum on the amount of their estimate of the expense of the construction of the tramway, as follows; namely,

Where the tramway or any part thereof will be situate in England,—into the Chancery Division of the High Court of Justice in England to the credit of the particular tramway:

Where the tramway will be situate wholly in Scotland,—either into the Chancery Division of the High Court of Justice in England in manner aforesaid, or (at the option of the promoters) into a bank in Scotland established by Act of Parliament or Royal Charter, in the name and with the privity of the Queen's Remembrancer of the Court of Exchequer in Scotland *ex parte* the particular tramway. Cap. XXIX.

The Board of Trade may issue their warrant to the promoters for such payment into court, which warrant shall be a sufficient authority for the persons therein named, not exceeding five in number, or the majority or survivors of them, to pay the money therein mentioned into the Chancery Division of the High Court of Justice in England or into the bank therein mentioned, in the name and with the privity of the officer therein mentioned, if any, and for that officer to issue directions to such bank to receive the same, to be placed to his account there according to the method (prescribed by statute, or general rules or orders of court or otherwise,) for the time being in force respecting the payment of money into the said courts respectively, and without fee or reward.

Provided, that in lieu, wholly or in part, of the payment of money, the promoters may bring into court as a deposit an equivalent sum of bank annuities, or of any stocks, funds, or securities on which cash under the control of the respective courts is for the time being permitted to be invested, or of exchequer bills (the value thereof being taken at the price at which the promoters originally purchased the same, as appearing by the broker's certificate of that purchase); and in that case the Board of Trade shall vary their warrant accordingly by directing the transfer or deposit of such amount of stocks, funds, securities, or exchequer bills by the persons therein named.

Where money is so paid into the Chancery Division

**Part IX.** of the High Court of Justice, the court may, on the application of the persons named in the warrant of the Board of Trade, or of the majority or survivors of them, order that the same be invested in such stocks, funds, or securities as the applicants desire and the court thinks fit.

In the subsequent provisions of these rules, the term "the deposit fund" means the money deposited, or the stocks, funds, or securities in which the same is invested, or the bank annuities, stocks, funds, securities, or exchequer bills transferred or deposited, as the case may be; and the term "the depositors" means the persons named in the warrant of the Board of Trade authorizing the deposit, or the majority or survivors of those persons, their executors, administrators, or assigns.

Penalty for  
non-comple-  
tion of tram-  
ways.

**RULE XXI.**—If the promoters empowered by the Order to make the tramway are possessed of a tramway already opened for public traffic, and which has during the year last past paid dividends on their ordinary share capital, no deposit will be required; but if such promoters (unless they are a local authority) do not, within the time in the order prescribed, or within such prolonged time as aforesaid, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the order, complete the tramway authorized by the order, they will be liable to a penalty of £50 a day for every day after the expiration of the period so limited, until the said tramway is completed and opened for public traffic, or until the sum received in respect of such penalty shall amount to five per cent. on the estimated cost of the works; and the said penalty may be applied for by any road authority claiming to be compensated in accordance with the provisions of Rule XXII., and in the same manner as the penalty provided in the third section of the Act 17 & 18 Vict. c. 31. known as "The Railway and Canal Traffic Act, 1854."

and every sum of money recovered by way of such penalty as aforesaid shall be paid under the warrant or order of such court or judge as is specified in the said third section of the Act 17 & 18 Vict. c. 31, to an account opened or to be opened in the name and with the privity of Her Majesty's Paymaster General on behalf of the Court of Chancery in England [the Queen's Remembrancer of the Court of Exchequer in Scotland, (according as the railway or tramway is situate in England or Scotland)], in the bank named in such order, and shall not be paid thereout, except as provided by Rule XXII., but no penalty will accrue in respect of any time during which it shall appear, by a certificate to be obtained from the Board of Trade, that the company was prevented from completing or opening such tramway by unforeseen accident or circumstances beyond their control: Provided, that the want of sufficient funds will not be held to be a circumstance beyond their control. Cap. XXIX.

**RULE XXII.**—If the promoters empowered by the order to make the tramway do not within the time in the order prescribed, or within such prolonged time as aforesaid, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the order, complete the tramway, and open it for public traffic, then and in every such case the deposit fund, or so much thereof as shall not have been repaid to the depositors (or any sum of money recovered by way of such penalty as aforesaid), shall, from and after the expiration of the time aforesaid, be applicable, and after due notice in the *London* or *Edinburgh Gazette*, as the case may require, shall be applied towards compensating all road authorities for the expense incurred by them in taking up any tramway or materials connected therewith placed by the promoters in or on any road vested in or maintainable by such road authorities respectively, and Forfeiture and application of deposit.



**Part IX.**

in making good all damage caused to such roads by the construction or abandonment of such tramway, and for which injury or loss no compensation or inadequate compensation shall have been paid, and shall be distributed in satisfaction of such compensation in such manner and in such proportions as to the Chancery Division of the High Court of Justice in England, or Court of Exchequer in Scotland, as the case may be, may seem fit; and if no such compensation shall be payable, or if a portion of the said deposit fund (or of the sum or sums of money recovered by way of penalty aforesaid) shall have been found sufficient to satisfy all just claims in respect of such compensation, then the said deposit fund (or the sum or sums of money recovered by way of penalty aforesaid), or such portion of it as may not be required as aforesaid, shall either be forfeited to Her Majesty, and shall accordingly be paid or transferred to or for the account of Her Majesty's Exchequer, in such manner as the court in which the deposit is made thinks fit to order, on the application of the solicitor of Her Majesty's Treasury, and the deposit fund, when so paid or transferred, or the proceeds thereof, shall be carried to and form part of the consolidated fund of the United Kingdom; or in the discretion of the court, if the promoters are a company, and such company is insolvent and has been ordered to be wound up, or a receiver has been appointed, shall wholly or in part be paid or transferred to such receiver, or to the liquidator or liquidators of the company, or be otherwise applied as part of the assets of the company for the benefit of the creditors thereof.

Release of  
deposit.

**RULE XXIII.**—The court in which the deposit is made shall, on the application of the depositors, order the deposit fund to be paid or transferred to the applicants, or as they shall direct, if, within the time by the order prescribed, or within the time prolonged by the

special direction of the Board of Trade under sect. 18 of the Tramways Act, 1870, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the order, the promoters thereby empowered to make the tramway, complete it, and open it for public traffic after inspection by an inspector appointed by the Board of Trade, and upon a certificate of the Board of Trade that the tramway is fit for public traffic, as provided by Rule XXV: Provided, that if within such time as aforesaid any portion of a line of tramway authorized by an order is opened for public traffic, after such inspection as aforesaid, and on such certificate under Rule XXV. as aforesaid, then on the production of a certificate, signed by a secretary or assistant-secretary of the Board of Trade, specifying the length of the portion of the tramway opened as aforesaid, and the portion of the deposit fund which bears to the whole of the deposit fund the same proportion as the length of the tramway so opened bears to the entire length of the tramway authorized by the order the court in which the deposit fund is made shall, on the application of the depositors, order the said portion of the deposit fund so specified in such certificate as aforesaid to be paid or transferred to the depositors, or as they shall direct.

RULE XXIV.—The depositors shall be entitled to receive payment of the interest or dividends from time to time accruing on the deposit fund while in court; and the court in which the deposit is made may from time to time, on the application of the depositors, make such order as seems fit respecting the payment of the interest or dividends accordingly.

If either House of Parliament refuse to confirm any provisional order in respect whereof a deposit has been made under these rules, or authorize a portion only of any tramway comprised in such order, or if any such

Cap. XXIX.

Miscellaneous  
as to deposits.

**Part IX.**

provisional order be withdrawn before the same is confirmed by Parliament, the court shall, upon production of a certificate to that effect purporting to be signed by a secretary or assistant-secretary to the Board of Trade, order the deposit fund or a proportionate part thereof, as the case may be, to be paid to the depositors, or as they shall direct.

The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest of or dividends on the same, or any part thereof respectively.

Any application under these rules to the Chancery Division of the High Court of Justice shall be made in a summary way by petition.

**OPENING OF TRAMWAYS.****Opening of tramways.**

**RULE XXV.**—The promoters shall give to the Board of Trade at least 14 days notice in writing of their intention to open any tramway, or portion of a tramway, and such tramway, or portion of tramway, shall not be opened for public traffic until an inspector appointed by the Board of Trade has inspected the same, and the Board of Trade has certified that it is fit for such traffic. The above-mentioned notice should be accompanied by the following documents, viz. :

- (1.) A copy of the Act or provisional order authorizing the tramways (if not already lodged for any previous portion of tramways).
- (2.) A copy of so much of the deposited plans and sections as relates to the portion of tramway proposed to be opened (or tracings of the same), showing whether double or single line.

- (3.) A plan and section and description of the rail **Cap. XXIX.**  
and substructure (if not already lodged).  
(4.) A list of the local and road authorities (if not  
already lodged for any previous portion of  
tramways).

**PROLONGATION OF TIME FOR THE COMMENCEMENT OR  
COMPLETION OF WORKS.**

The Board of Trade, under the powers conferred upon them by sect. 18 of the Tramways Act, 1870, have made the following rules with respect to applications for a prolongation of time for the commencement or the completion of the works authorized by any order made under the above-named Act:—

Prolongation  
of time for  
commence-  
ment or  
completion  
of works.

1. The application should be in the form of a memorial setting forth the grounds on which the application is made, and must be made at least one month before the expiration of the time prescribed for the commencement or the completion of the works, as the case may be.

2. The promoters of any tramway undertaking authorized by any order, who intend to apply to the Board of Trade for a prolongation of the time limited for the commencement or the completion of the works authorized by such order, shall publish by advertisement, once at least in two successive weeks, in some one and the same newspaper circulating in the district affected by such order, a notice of their intention to apply to the Board of Trade for a prolongation of time.

3. The notice must state the period to which it is proposed to prolong the time limited for the commencement or the completion of the works, as the case may be, and must contain a notification that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the assistant-secretary of the railway department of

Part IX. the Board of Trade, on or before a day to be named in the advertisement, being not less than 21 days from the date of the first publication of the advertisement, and that copies of their representations or objections are at the same time to be sent to the promoters.

4. A similar notice must be delivered to every local and road authority before the second publication of the notice. Copies of newspapers containing the notice, and a statement that a copy of it has been duly served on the local and road authorities as required by these rules, must be sent to the Board of Trade with the application.

5. Before the Board of Trade comply with the application, they will impose such conditions (if any) as they think fit.

Board of Trade (Railway Department),

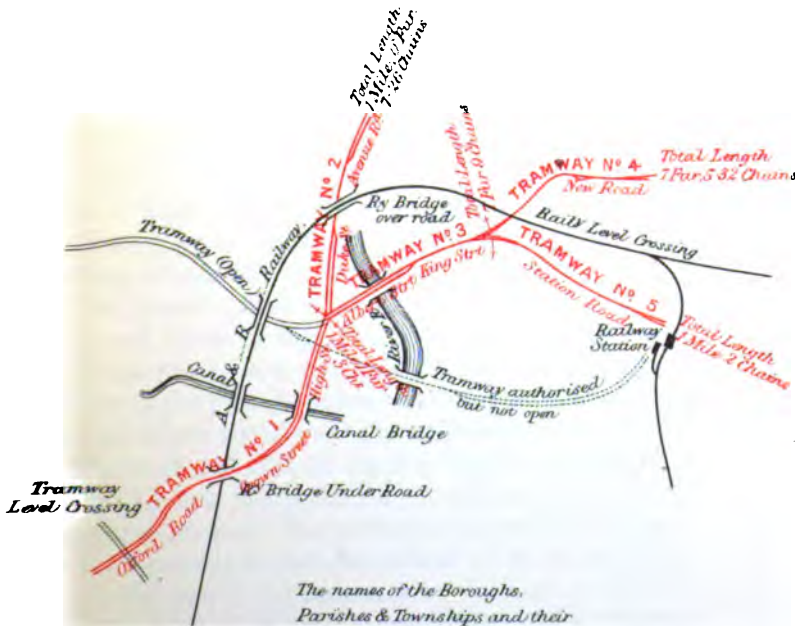
*August, 1881.*

HENRY G. CALCRAFT.

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## FORM OF DIAGRAM OF PROPOSED TRAMWAYS.

*To be Deposited at the Board of Trade with the Plans,  
on or before the 30th Nov<sup>r</sup>.*



*The names of the Boroughs,  
Parishes & Townships and their  
boundaries to be inserted  
where practicable.*

*Scale must not be less than 2 Inches to a Mile.*



[The following has been obtained from the office of the Board of Trade.] **Cap. XXIX.**

## TRAMWAYS.

*Requirements, in cases of application to the Board of Trade, for their approval of the plan and statement relating to the rail and substructure of a tramway.*

There should be forwarded to the Board of Trade :

1. A drawing (in duplicate), consisting of a full-sized section of the proposed rail; and a full-sized plan and elevation of the same, extending for about 9 inches on each side of the joint, and showing how the joint is proposed to be secured.

There should be a statement on the drawing of the material, weight, and length of the proposed rail and fish-plates, and of the depth and width of the groove.

2. A drawing, on a scale of 2 inches to the foot (in duplicate), consisting of a plan, cross section, and longitudinal section of the permanent way and substructure of the tramway, and showing the mode of fixing the rails and chairs (if any), and the gauge ties (if any).

There should be a statement on this drawing of the nature of the paving proposed to be adopted between the rails, and for a distance of 18 in. on the outside of the rails.

There should also be on this drawing a plan on a scale of 1 inch to the foot, of the points proposed to be employed at single line passing places and junctions.

The drawings in each case should be on tracing linen.

3. The names and addresses of the road authorities, with a copy of the under-mentioned notice endorsed with the date and manner of service.

4. Tracings of the above drawings should also be served upon the road authorities, with a notice that any objections or representations may be brought before the Board of Trade within 10 days from the date of such service.

The Board of Trade (Railway Department),  
Whitehall Gardens.



Part IX. R. 4503.SPECIAL REQUIREMENTS IN THE  
CONSTRUCTION OF TRAMWAYS.

1. The space between double lines of rails (including passing places) shall be sufficient to allow a minimum clearance of 15 inches between the sides of the widest carriages and engines authorized to be used on the tramways, when passing one another.

## WHERE STEAM IS TO BE USED.

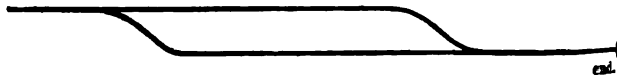
2. The passing loops should be at least 3 chains in length.

3. The entrance to the passing loops should be from a straight line, thus :



or some equivalent arrangement should be made to ensure the wheels taking the proper line without the use of movable facing points.

4. Triangles should, where practicable, be made at the ends of the line to enable the engine to be turned. Failing this, the line should terminate thus, and not in a simple fork :



Board of Trade (Railway Department),  
May, 1881.

HENRY G. CALCRAFT.

*[The following has been obtained from the office of the Board of Trade.]*

## TRAMWAYS ORDERS CONFIRMATION ACT, 1879, CAP. CXCIH. (a).

*Form of Licence of the Board of Trade for the use of  
Steam Power on Tramways for a limited period not  
exceeding one year, and as an experiment only, and  
Form of Procedure.*

### FORM OF LICENCE.

The Board of Trade under the powers conferred upon them by the Tramway Orders Confirmation Act, 1879, do by this their licence authorize, as an experiment only, the use of steam power in addition to, or in substitution of, animal power by the Tramways Company (hereinafter called "the Company") on the tramways authorized by the Tramways Act, 18 [tramways order, 18 , which was confirmed by the Tramways Orders Confirmation Act, 18 ] for a period not exceeding from

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(a) This is a public Act of a local character, and is an Act for confirming certain provisional orders made by the Board of Trade under the Tramways Act, 1870, relating to Bristol Tramways (Extension), Briton Ferry and Swansea Tramways, Burnley and District Tramways, Chesterfield, Brompton, and Whittington Tramways, Crewe and District Tramways, Derby Tramways, Dewesbury, Batley, and Birstal Tramways (Extension), Ipswich Tramways, Leamington and Warwick Tramways, Liverpool Corporation Tramways, Newcastle-upon-Tyne Tramways, North London Suburban Tramways, Oxford Tramways, Staffordshire Tramways, Stoke-upon-Trent, Fenton, Longton, and District Tramways, Sunderland Corporation Tramways, Sunderland Tramways (Extension), Swansea Tramways (Extension), Tyne-mouth and District Tramways, Wigan Tramways, York Tramways; and for empowering the Board of Trade to grant licenses for the use for limited periods, by way of experiment, of steam or any mechanical power upon tramways in certain cases,

**Part IX.** the date hereof, subject to the following requirements, regulations, and conditions, that is to say :—

#### REQUIREMENTS.

The engine to be used on the tramways shall be an engine built by \_\_\_\_\_, of \_\_\_\_\_, and designated by a plate affixed thereto as "No. \_\_\_\_\_," if and so long as it complies with the following requirements, that is to say :

- (a.) The engine shall be fitted with an efficient break and a governor shall be attached to the engine so arranged that any time when the engine attains a speed of \_\_\_\_\_ or more miles an hour it shall cause the steam to be shut off and the breaks applied.
- (b.) The number shall be shown in a conspicuous part thereof.
- (c.) It shall be fitted with an indicator by means of which the speed shall be shown, with a suitable fender to push aside obstructions, and with a special bell [or whistle, or other apparatus], to be sounded as a warning when necessary.
- (d.) Arrangement shall be made enabling the driver to command the fullest possible view of the road before him.
- (e.) It shall be free from noise produced by blast or clatter of machinery; the machinery shall be concealed from view at all points above four inches from the level of the rails, and all fire used on the engine shall be concealed from view.

Every carriage used on the tramways shall be so constructed as to provide for the safety of passengers and for their safe entrance to, exit from, and accommodation in, such carriage, and for their protection from the machinery of the engine used for drawing or propelling such carriage.

## REGULATIONS.

I. The speed at which the engine and carriages shall be driven or propelled along the tramways shall not exceed the rate of        miles an hour, and the speed at which such engines shall pass through moveable facing-points shall not exceed the rate of four miles an hour.

II. The special bell [or whistle, or other apparatus], shall be sounded by the driver of the engine from time to time when it is necessary as a warning.

III. No steam or smoke shall be emitted from the engine, and no hot air shall issue in a way to annoy passengers.

IV. Whenever it is necessary to prevent impending danger, the engine shall be brought to a standstill.

V. The entrance to and exit from the carriages shall be by the hindermost or conductor's platform.

*[Here to follow any special regulations that may be necessary for any particular case.]*

VI. The company shall place, and keep placed, in a conspicuous position inside of each carriage in use on the tramways, a printed copy of these requirements, regulations, and conditions.

VII. For any breach of any of the above requirements or regulations the company shall for each offence be liable to a penalty not exceeding £10.

## CONDITIONS.

The Board of Trade and their officers may, from time to time, and shall on the application of the local

**Part IX.**  

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authority of any of the districts through which the said tramways pass, inspect the engine or carriages used on the tramways, and the machinery therein; and may, whenever they think fit, prohibit the use on the tramways of any of them, which in their opinion are not safe for use.

**FORM OF PROCEDURE.**

The application for a licence should be made by the promoters or their lessees, and should contain the following particulars:—

- (a.) The title of the Act or order authorizing the construction of the tramways.
- (b.) A statement of the portion of tramway on which steam power is proposed to be used.
- (c.) The name of the local and road authority of the district or districts in which steam power is to be used.
- (d.) The written consent to the application of each of such local and road authority.
- (e.) The period for which the licence is required.
- (f.) The name of the maker of the proposed engine.

The Board of Trade would then appoint one of their inspecting officers to visit the locality of the tramways, and to report to them whether the engine proposed to be used complied with the above requirements, and whether the tramway is fit, and the road suitable, for steam engines.

The Board of Trade  
(Railway Department),  
Whitehall Gardens.

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*[The following has been obtained from the office of the Board of Trade.]*

Cap. XXIX.

**REGULATIONS AND BYE-LAWS MADE BY  
THE BOARD OF TRADE WITH RESPECT  
TO THE USE OF STEAM POWER ON  
TRAMWAYS.**

The Board of Trade under the powers conferred upon them by the Tramways Act, 18 , [Tramways Order, 18 , which was confirmed by the Tramways Orders Confirmation Act, 18 , Vict. c. :] do hereby make the following regulations for securing to the public reasonable protection against danger in the exercise of the powers by the said Act [order] conferred with respect to the use of steam power by the tramways company [limited], on all or any of the authorized tramways of the company [portions of the authorized tramways] which are specified in sect. of the said Act [order] in substitution for the regulations set forth in the schedule to the said order annexed, and do also hereby make the following bye-laws with regard to all or any of the tramways upon which steam power may be used under the authority of the said Act [order], that is to say :—

**REGULATIONS.**

I. The engine or engines to be used on the tramways shall comply with the following requirements, that is to say :—

- (a.) They shall be fitted with an efficient break, and a governor shall be attached to each of them so arranged that at any time when the engine attains a speed of [ten] or more miles an hour it shall cause the steam to be shut off and the breaks applied.
- (b.) Each engine shall be numbered and the number shall be shown in a conspicuous part thereof.
- (c.) They shall be fitted with an indicator by means of which the speed is shown ; with a suitable fender to push aside obstructions ; and with a

**Part IX.**

special bell [or whistle, or other apparatus] to be sounded as a warning when necessary.

(d.) Arrangement shall be made enabling the driver to command the fullest possible view of the road before him.

(e.) They shall be free from noise produced by blast or clatter of machinery; the machinery shall be concealed from view at all points above four inches from the level of the rails, and all fire used on such engines shall be concealed from view.

II. Every carriage used on the tramways shall be so constructed as to provide for the safety of passengers and for their safe entrance to, exit from, and accommodation in, such carriages, and for their protection from the machinery of any engine used for drawing or propelling such carriages.

III. The Board of Trade and their officers may, from time to time, and shall on the application of the local authority of any of the districts through which the said tramways pass, inspect such engines or carriages used on the tramways and the machinery therein, and may, whenever they think fit, prohibit the use on the tramways of any of them which in their opinion are not safe for use.

IV. The speed at which such engines and carriages shall be driven or propelled along the tramways shall not exceed the rate of                    miles an hour, and the speed at which such engines shall pass through moveable facing-points shall not exceed the rate of four miles an hour.

*[Here to follow any special regulations that may be necessary for any particular case.]*

**PENALTY.**

Under section                    of the said Act [order] the company or any person using steam power on the tramways contrary to any of the above regulations will for

every such offence be subject to a penalty not exceeding £10, and also in the case of a continuing offence to a further penalty not exceeding £5 for every day after the first, during which such offence continues. Cap. XXIX.

#### BYE-LAWS.

I. The special bell [or whistle, or other apparatus] shall be sounded by the driver of the engine from time to time when it is necessary as a warning.

II. No steam or smoke shall be emitted from the engines and no hot air shall issue in a way to annoy passengers.

III. Whenever it is necessary to prevent impending danger, the engine shall be brought to a standstill.

IV. The entrance to and exit from the carriages shall be by the hindermost or conductor's platform.

*[Here to follow any special bye-laws that may be necessary for any particular case.]*

V. The company shall place and keep placed, in a conspicuous position inside of each carriage in use on the tramways, a printed copy of these regulations and bye-laws.

#### PENALTY.

Under section                      of the said Act [order] any person offending against or committing a breach of any of these bye-laws, is liable to a penalty not exceeding 40s.; and under section                      of the same Act [order] it is provided that the provisions of the Tramways Act, 1870, with respect to the recovery of penalties shall apply to any penalty under the said Act [order] and to any penalty for non-observance of any bye-law made by the Board of Trade under the authority of the said Act [order].

Signed by order of the Board of Trade, this  
day of                      , 18 .

*An Assistant Secretary to the Board of Trade.*



**Part IX.**

*[The following has been obtained from the office of the Board of Trade.]*

**BYE-LAWS AND REGULATIONS** made by the  
Company under the powers conferred on  
the Company by the Tramways Act, 1870 (a).

1. The bye-laws and regulations hereinafter set forth shall extend and apply to all carriages of the company, and to all places with respect to which the company have power to make bye-laws or regulations.

2. Every passenger shall enter or depart from a carriage by the hindermost or conductor's platform, and not otherwise.

3. No passenger shall smoke inside any carriage.

4. No passenger or other person shall, while travelling in or upon any carriage, play or perform upon any musical instrument.

5. A person in a state of intoxication shall not be allowed to enter or mount upon any carriage, and if found in or upon any carriage shall be immediately removed by or under the direction of the conductor.

6. No person shall swear or use obscene or offensive language whilst in or upon any carriage, or commit any nuisance in or upon or against any carriage, or wilfully interfere with the comfort of any passenger.

7. No person shall wilfully cut, tear, soil, or damage the cushions or the linings, or remove or deface any number plate, printed or other notice, in or on the carriage, or break or scratch any window of or otherwise wilfully damage any carriage. Any person acting in contravention of this regulation shall be liable to the penalty prescribed by these bye-laws and regulations, in addition to the liability to pay the amount of any damage done.

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(a) See sect. 46 of the Act, *ante*, p. 421.

8. A person whose dress or clothing might, in the Cap. XXIX. opinion of the conductor of a carriage, soil or injure the linings or cushions of the carriage, or the dress or clothing of any passenger, or a person who, in the opinion of the conductor, might for any other reason be offensive to passengers, shall not be entitled to enter or remain in the interior of any carriage, and may be prevented from entering the interior of any carriage, and shall not enter the interior of any carriage after having been requested not to do so by the conductor, and, if found in the interior of any carriage, shall, on request of the conductor, leave the interior of the carriage upon the fare, if previously paid, being returned.

9. Each passenger shall, upon demand, pay to the conductor or other duly authorized officer of the company the fare legally demandable for the journey.

10. Each passenger shall show his ticket (if any) when required so to do to the conductor or any duly authorized servant of the company, and shall also when required so to do either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger.

11. A passenger not being an artisan, mechanic, or daily labourer, within the true intent and meaning of the Acts of Parliament relating to the company, shall not use or attempt to use any ticket intended only for such artisans, mechanics, or daily labourers.

12. Personal or other luggage (including the tools of artisans, mechanics, and daily labourers) shall, unless otherwise permitted by the conductor, be placed on the front or driver's platform, and not in the interior or on the roof of any carriage.

13. No passenger or other person not being a servant of the company shall be permitted to travel on the steps or platforms of any carriage, or stand either on the roof or in the interior, or sit on the outside rail on the roof

**Part IX.** of any carriage, and shall cease to do so immediately on request by the conductor.

14. No person, except a passenger or intending passenger, shall enter or mount any carriage, and no person shall hold or hang on by or to any part of any carriage, or travel therein otherwise than on a seat provided for passengers.

15. When any carriage contains the full number of passengers which it is licensed to contain, no additional person shall enter, mount, or remain in or on any such carriage when warned by the conductor not to do so.

16. When a carriage contains the full licensed number of passengers, a notice to that effect shall be placed in conspicuous letters and in a conspicuous position on the carriage.

17. The conductor shall not permit any passenger beyond the licensed number to enter or mount or remain in or upon any part of a carriage.

18. No person shall enter, mount, or leave, or attempt to enter, mount, or leave, any carriage whilst in motion.

19. No dog or other animal shall be allowed in or on any carriage, except by permission of the conductor, nor in any case in which the conveyance of such dog or other animal might be offensive or an annoyance to passengers. No person shall take a dog or other animal into any carriage after having been requested not to do so by the conductor. Any dog or other animal taken into or on any carriage in breach of this regulation shall be removed by the person in charge of such dog or other animal from the carriage immediately upon request by the conductor, and in default of compliance with such request may be removed by or under the direction of the conductor.

20. No person shall travel in or on any carriage of the company with loaded fire-arms.

21. No passenger shall wilfully obstruct or impede any officer or servant of the company in the execution

of his duty upon or in connexion with any carriage or tramway of the company. **Cap. XXIX.**

22. The conductor of each carriage shall enforce or prevent the breach of these bye-laws and regulations to the best of his ability.

23. Any person offending against or committing a breach of any of these bye-laws or regulations shall be liable to a penalty not exceeding 40s.

24. The expression "conductor" shall include any officer or servant in the employment of the company and having charge of a carriage.

25. There shall be placed and kept placed in a conspicuous position inside of each carriage in use a printed copy of these bye-laws and regulations.

26. These bye-laws shall come into force on the  
day of 188 .

*Secretary of the Company.*

I hereby certify that a true copy of the foregoing bye-laws and regulations has, in accordance with the provisions of sect. 46 of the Tramways Act, 1870, been laid before the Board of Trade not less than two calendar months before such bye-laws and regulations came into operation, and that such bye-laws and regulations have not been disallowed by the Board of Trade within the said two calendar months.

*An Assistant Secretary to the Board of Trade.*

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**Part X**

**PART X.**

**ORDERS OF LOCAL GOVERNMENT  
BOARD RELATING TO HIGHWAYS.**

**CHAPTER XXX.**

**GENERAL ORDERS FOR ACCOUNTS,  
HIGHWAY DISTRICTS, &c.**

The following circular was issued by the Local Government Board with the general order for accounts next hereafter set out (*see post*, p. 484).

**GENERAL ORDER FOR ACCOUNTS.**

**HIGHWAY DISTRICTS.**

Local Government Board,  
Whitehall, S.W.,

SIR, 30th April, 1879.

I am directed by the Loc. Gov. Bd. to forward to you herewith two copies of an order which they have issued under sect. 9 (a) of "The Highways and Locomotives (Amendment) Act, 1878" (41 & 42 Vict. c. 77), and sects. 3 and 5 of "The District Auditors Act, 1879" (42 Vict. c. 6) (b), prescribing regulations with respect to the mode of keeping and auditing the accounts of the highway boards of the several highway districts in England and North Wales, and of their officers.

The board have endeavoured to frame the accounts in as simple a form as possible, consistently with giving effect to the various requirements of the statutes bearing on the subject, and providing the district auditor with a ready and effectual means of checking the several entries.

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(a) See *ante*, p. 262.

(b) See *ante*, p. 374.

Two essential features to be preserved throughout Chap. XXX.  
the entire system of accounts are—

1. Uniformity in the headings under which the principal items of expenditure are classed, and a clear interpretation of those headings.

2. A separation, for the purposes of s. 13 (*ante*, p. 266) of the recent Act (41 & 42 Vict. c. 77), of the "expenses incurred in the maintenance of main roads," or following the construction in the last clause of that section, "the cost of repairs defrayed out of current rates," so as to afford the means of obtaining repayment of a moiety by the county authority.

As regards the first point, the board have thought it most convenient, on the whole, to adopt the headings under which the leading items of expenditure have hitherto been classified, viz., manual labour, team labour, materials, improvements, tradesmen's bills, and miscellaneous. Experience has shown, however, that considerable difference of opinion has prevailed among highway authorities as to the precise items to be included under those headings, particularly as regards "manual labour" and "materials." To remove any doubt in future, and to secure uniformity, the board have, in Article 21 of the order, endeavoured to give such definitions as will be found clear, concise, and comprehensive. The definition of "improvements" follows the terms of the statutes 27 & 28 Vict. c. 101, s. 48 (*ante*, p. 250), and 35 & 36 Vict. c. 85, s. 15 (*ante*, p. 345).

As respects the second point, the board have regarded the provision in sect. 13, which relates to repayment by the county authority, as intended to apply to expenses incurred in actual repairs of main roads, and not to the salary of the district surveyor, the cost of tools, or such other charges as are incurred in common for the whole of the roads in the district. Such charges could, for the purposes of the section, be only dealt with by way of estimate or apportionment, for which the board are unable to find any sufficient authority.

**Part X.** The board further regard repayment by the county authority as intended to apply to one half of the expenses incurred in the repair of main roads, without reference to deduction in respect of receipts (if any) derived from main roads.

The order deals with the accounts of the clerk, the treasurer, and the district surveyor.

The books to be kept by the clerk are—a minute book, a ledger, an order check book, and a petty cash book; the minute book, for the purpose of accounts, being regarded as a journal.

The board believe that prior to the passing of the Act 41 & 42 Vict. c. 77, a parochial ledger, in addition to the general ledger, was kept by the clerk. The provision in s. 7 (*ante*, p. 261), of that Act, under which all expenses, with a few special exceptions, are made chargeable to the district fund, seems to render a parochial ledger, as a distinct book, unnecessary. The order requires that a separate account with every highway parish in the district shall be kept in the general ledger or in a separate ledger, and it will rest with the highway board to adopt whichever course they may think most advisable.

It will, perhaps, be convenient here to refer to a point in connection with the proviso to the section just mentioned. Under that proviso, the highway board, if they think that by reason of natural differences of soil or locality, or other exceptional circumstances, any one or more parishes within their district ought to bear the expenses of maintaining their own highways, may, with the approval of the county authority, divide their district into parts, consisting either of one or more highway parishes, and may charge exclusively on each part the expenses of maintaining and repairing the highways therein. It has not appeared to the board to be requisite to make special provision in the order for these cases, which will probably not be of frequent occurrence, nor will any practical difficulty apparently arise unless the “part” of the district consists of more than one

parish. In such a case, the board consider that the parishes forming the "part" of the district might properly be treated in the ledger and other books of account as one separate parish, distinguished by such name as the highway board may consider appropriate. Chap. XXX.

In accordance with the general principle of distinguishing throughout the accounts the expenditure on repairs of main roads from the expenditure on district roads and existing turnpike roads, the board have, in the form of ledger prescribed by the present order, introduced an extra column, by means of which, as explained in a foot-note, the ledger will show on both sides the items relating to the main roads separately from the other roads. The extra columns, although they may appear on all the folios of the ledger, are intended only to be used as regards those items to which the repayment by the county authority will apply.

The treasurer is only required to keep a book in the form usually prescribed for such an officer.

The books to be kept by the district surveyor are—a cash book, a receipt check book, a wages book, a contract book, and a stock and stores account.

The cash book is intended to show all receipts and payments by the district surveyor, arranged in order of date, with the exception of disbursements entered in his petty cash book, which may be transferred to the cash book in gross sums.

Where moneys are received by the district surveyor from any other source than the highway board, receipts should be given from the receipt check book, and references made in the cash book to the corresponding numbers of the receipts.

The payments are classed in the cash book under three principal headings,—namely,

REPAIRS,  
IMPROVEMENTS, and  
GENERAL EXPENSES,



**Part X.** the heading of "repairs" being sub-divided into—

MANUAL LABOUR,

TEAM LABOUR,

MATERIALS,

TRADESMEN'S BILLS and MISCELLANEOUS.

The disbursements under the first three of these sub-heads will consist of the wages of labourers, which will be entered in gross sums, and of such payments as may be made to contractors by the district surveyor, references being made to the folios of the wages book, or the contract book, as the case may be, containing the detailed particulars.

The fourth sub-head of "repairs," namely, tradesmen's bills and miscellaneous," is intended for the entry of such items of that description as may be paid by the district surveyor, and are not included in those entries in his petty cash book which are transferred to the cash book in gross sums.

Under each of the four sub-heads of "repairs," the columns are sub-divided for the purpose of showing the portions expended respectively on the repairs of main roads, district roads, and existing turnpike roads. In cases where a highway district is situated in more than one county, a further sub-division will have to be made, as regards "main roads," and the amount shown separately with respect to each county. (See s. 19 of the 41 & 42 Vict. c. 77, *ante*, p. 271).

With reference to "improvements," it will be seen from the definition of the term in art. 21 of the order, that works under that head are not regarded as repairs, and will not therefore be included in the repayment by the county authority. Hence, the column for "improvements" in the cash book contains no sub-division with respect to main roads and other roads.

Under the head of "general expenses" will be classed such items as stationery, and other costs incurred for common purposes, which are not included in those entries in the district surveyor's petty cash book which are transferred to the cash book in gross sums.

The cash book is to be balanced quarterly, or at such other times as the highway board may direct. Chap. XXX.

The wages book, as its title indicates, is confined to payments to labourers for the various classes of work, and shows the names of the labourers, the days on which and the places at which they were employed, as well as the rate of pay (whether by day or otherwise), and the amount paid to each. For convenience of reference by those seeking information with respect to the work performed in particular parishes, a separate wages book is to be kept for each parish, and columns are provided in the book so as to show the kind of labour and the road on which it was performed, distinguishing, as in the cash book, between main roads and other roads. The labourers' signatures (or marks, duly attested) are to be inserted in the book at the time when the wages are paid, and the book is afterwards to be submitted to the waywarden of the parish, or to one of such waywardens if there be more than one. This can probably be done conveniently at the meetings of the highway board.

The period over which each page of the wages book is to extend is made to depend upon the arrangement adopted by the highway board of each district with respect to the payment of the labourers. In some districts the labourers are paid monthly, and the form in the order is framed so as to embrace four weeks, as being the longest period. Where the payments are made weekly or fortnightly, the weekly groups of columns must be reduced in number accordingly.

The contract book is arranged in divisions according to the following headings, viz., manual labour, team labour, materials, and improvements, and serves as a record of work performed and monies payable under contract, as well as the actual payments (if any) made to contractors by the district surveyor. Under the head of materials the columns will include not only work performed under contract, but materials supplied in that way. As a general rule, payments of this kind

**Part X.**

will be made by the highway board, through their clerk, by means of an order on the treasurer; but where the highway board authorize the district surveyor to make such payments, the form admits of proper detailed entries.

The board believe that it is not unfrequently the practice for a highway board to enter into a contract for supplying, on payment of a lump sum per annum, all materials and labour required for the repairs of the whole or a certain portion of the highways in their district. Where such a course is adopted, the board do not see how the cost of the repair of main roads is to be precisely ascertained for the purpose of repayment by the county authority, or how the payment to the contractor is to be distributed in the accounts under the various headings, either as respects the classes of roads or the classes of repairs. An estimated apportionment is apparently all that can be arrived at, and with a view to avoid the difficulty in future, the board suggest that contracts should be made specifically for main roads, and for the several classes of repairs indicated by the headings of the accounts.

It may here be convenient to point out that under Art. 21 of the order, contracts entered into for repairs *generally* are to be dealt with under the head of "manual labour," and that it is only when they are entered into for a specific class of repairs, such as materials or team labour, that they are to be dealt with otherwise.

The contract book, like the cash book and the wages book, preserves the distinction between main roads and other roads.

The stock and stores account supplies an obvious want. Stones or other materials for repairs, and tools, implements, and other stock, are entrusted to the custody of the district surveyor, and a large quantity of material, the cost of which has been charged in the accounts of a year, will often at the close of the year

remain unused, and should therefore be accounted for by Chap. XXX. the district surveyor, and, in the case of a change of officers, handed over to his successor. The account is so framed in the order as to show the quantity of materials received from time to time, and the places where and the purposes for which they were used, as well as the quantity in hand at the end of the year. It also serves the purpose of an inventory of tools or other stores, which sect. 40 of "The H. Act, 1835," requires to be kept by parish surveyors, and which seems equally important in districts.

The financial statement is rendered necessary by sect. 3 of "The District Auditors Act, 1879." This statement is to be made up annually by the highway board as a "local authority" under that section, which is quoted on page 6 of the order (a), and, with the proper stamp affixed, submitted to the district auditor and transmitted by him to this office. The form in the order is not to be used until after the 25th day of March, 1880. For the year ended on the 25th of March last, the board have prescribed another form of financial statement, copies of which are herewith enclosed.

Annexed to the form of financial statement is a form termed the "loan account," which, as pointed out in a note at the foot of the financial statement, is intended to show the particulars of the several loans outstanding, and the sums paid, whether for principal or interest, in respect of each during the year, and the balance remaining due. Provision is also made in separate columns at the foot of the loan account for showing, in cases where all or any portion of a loan has been expended during the year, the nature of the improvements and the amount expended in each case.

The financial statement will, as respects future years, supersede the annual return of receipts and expenditure hitherto furnished to the board. That return will, as regards the year ended the 25th of March last,

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(a) See *post*, p. 491.

**Part X.** be made as usual in the form transmitted with the board's circular letter of the 20th ultimo. As regards future years, the board, with a view to give effect to the provision contained in sect. 9 of the recent Act (41 & 42 Vict. c. 77) have, in the order, prescribed a form in which a statement under the name of the "parochial statement" is, within 30 days after the completion of the audit, to be furnished to each member of the highway board, and to the overseers of the parishes in the district. That statement, however, will not have to be transmitted to the Loc. Gov. Bd.

It must be specially borne in mind that sect. 7 of "The District Auditors Act, 1879," provides that if a local authority fail to comply with the provisions of that Act with respect to a financial statement, such local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts which should be comprised in such financial statement, that treasurer or other officer, shall be liable to a fine not exceeding £20 for each offence, to be recovered by action on behalf of H. M. in the High Court of Justice.

It only remains for the board to advert generally to the altered arrangements respecting the audit.

Under sect. 9 of "The Highways and Locomotives (Amendment) Act, 1878" (a), the accounts of all highway authorities and their officers are to be audited and examined by the auditor of accounts relating to the relief of the poor.

Notice of the time and place for holding the audit of the accounts will be given by the district auditor to the clerk, the treasurer, and the district surveyor, as well as to the waywarden or waywardens of each highway parish in the district. The waywardens, on receiving such notice, should cause it to be published in the several parishes in the same way as notices of parochial meetings are usually published.

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(a) *Ante*, p. 262.

Articles 11 to 20 contain similar provisions to those in force in the case of poor law accounts as regards the attendance of officers at the audit, the production of books and papers, the accounting by representatives of deceased officers, and the mode of conducting the audit. Chap. XXX.

It will be seen from article 1 of the order that the board have reserved to themselves the power to assent from time to time to a departure from its provisions in cases where the circumstances are of so exceptional a character as to render such a course expedient.

It should be added that the District Auditors Act provides that, for the purpose of contributing towards the salary and expenses of the district auditor, there shall be charged on every local authority whose accounts are subject to audit by him, a stamp duty, according to a scale based upon the amount of the expenditure included in the financial statement.

The following is the scale of stamp duties prescribed by the Act:—

| Where the Total of the Expenditure comprised in the Financial Statement is | The Sum shall be |
|----------------------------------------------------------------------------|------------------|
| Under 20 <i>l.</i> ... ..                                                  | 5 <i>s.</i>      |
| 20 <i>l.</i> and under 50 <i>l.</i> ... ..                                 | 10 <i>s.</i>     |
| 50 <i>l.</i> and under 100 <i>l.</i> ... ..                                | 1 <i>l.</i>      |
| 100 <i>l.</i> and under 500 <i>l.</i> ... ..                               | 2 <i>l.</i>      |
| 500 <i>l.</i> and under 1,000 <i>l.</i> ... ..                             | 3 <i>l.</i>      |
| 1,000 <i>l.</i> and under 2,500 <i>l.</i> ... ..                           | 4 <i>l.</i>      |
| 2,500 <i>l.</i> and under 5,000 <i>l.</i> ... ..                           | 5 <i>l.</i>      |
| 5,000 <i>l.</i> and under 10,000 <i>l.</i> ... ..                          | 10 <i>l.</i>     |
| 10,000 <i>l.</i> and under 20,000 <i>l.</i> ... ..                         | 15 <i>l.</i>     |
| 20,000 <i>l.</i> and under 50,000 <i>l.</i> ... ..                         | 20 <i>l.</i>     |
| 50,000 <i>l.</i> and under 100,000 <i>l.</i> ... ..                        | 30 <i>l.</i>     |
| 100,000 <i>l.</i> and upwards ... ..                                       | 50 <i>l.</i>     |

The stamp will be affixed to or impressed upon the financial statement, and it has been arranged by the commissioners of Inland Revenue that there shall be appropriated adhesive stamps, bearing the words “district audit,” representing the value of 5*s.*, 10*s.*, £1, £2, and £5; and such stamps have accordingly been pro-

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vided, and will be supplied on application to any distributor or sub-distributor of stamps.

The commissioners require that where the duty exceeds £5, it should be denoted by an impressed stamp, and any financial statement liable to duty above this amount will, on being presented to any distributor or sub-distributor, be forwarded by him free of expense to the Inland Revenue department, in order that it may be impressed with the required stamp.

Where any doubt is felt as to the amount of expenditure upon which the stamp is to be assessed, the affixing of the stamp may be postponed until the question has been submitted to the district auditor, and determined by him.

I am, Sir,

Your obedient servant,

JOHN LAMBERT,

*Secretary.*

The following general order for accounts, Highway Districts, was made by the Local Government Board on the 29th April, 1879 :

To the Highway Boards of the several H. districts for the time being, constituted in pursuance of the H. Act, 1862, and the H. Act, 1864, or one of such Acts.

To the clerks, treasurers, and district surveyors for the time being appointed by the said highway boards respectively ;

To the several district auditors authorized for the time being to audit the accounts of the said highway boards respectively ;

And to all others whom it may concern.

WHEREAS by sect. 9 of "The Highways and Locomotives (Amendment) Act, 1878" (a), it is enacted that the accounts of the highway authority of every highway district shall be made up in such form as the Local

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(a) *Ante*, p. 262.

Government Board shall from time to time prescribe, and Chap. XXX. shall be balanced to the 25th day of March in each year;

And whereas by sect. 5 of "The District Auditors Act, 1879," it is enacted as follows :

"Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of sect. 98 of the Poor Law Amendment Act, 1834."

Now therefore, we, the Local Government Board, hereby order as follows :

Art. 1. The several regulations in this order contained shall henceforth be observed in regard to the accounts of every highway board, and of their officers, and to the audit of such accounts, except in so far as the Local Government Board may from time to time assent to any departure from such regulations.

#### ACCOUNTS TO BE KEPT BY THE CLERK.

Art. 2. The clerk shall enter from time to time at proper dates in the minute book of the highway board a statement of the books and accounts inspected and



**Part X.**

examined by him, and of all orders drawn on the treasurer, and of all monies paid or received, and of all minutes relating to the allocation or division of charges, or any other pecuniary transaction of the highway board, and shall insert marginal notes of reference to the folios of the respective ledgers in which the items relating to any of such orders, payments, receipts, or other pecuniary transactions are entered.

Art. 3. The clerk shall also punctually enter up and accurately keep the following books and accounts, according to the forms and directions relating to such books and accounts respectively in this order and in the schedule thereto, namely :

- (1.) A ledger (Form A.), in which the items contained in the minute book of the various transactions relating to the receipt or payment of monies by the highway board, and the receipt and disposal of goods or materials, or the execution of works, or performance of services, on behalf of the district, or of any highway parish therein, shall be entered and posted up according to their proper dates, under the following heads of account (or as many thereof as may be requisite), and such additional heads as may be or may from time to time become necessary :

District Surveyor's Cash Account.

Manual Labour Account.

Team Labour Account.

Materials Account.

Tradesmen's Bills Account.

Improvements Account.

Law Charges Account.

Salaries Account.

Clerk's Petty Cash Account.

Main Roads Account.

County Authority's Account.

Turnpike Roads Account.

Loan Account (Principal).  
 Loan Account (Interest).  
 Sinking Fund Account.  
 District Fund Account.  
 Treasurer's Account.  
 General Balance Account.

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An account shall also be kept in the same ledger, or in a separate ledger in a similar form, with every highway parish in the district.

And in connection with the several items in each of the said accounts, the respective dates of the transactions shall be inserted, together with references to the folios of the minute book in which the entries relating to such transactions are contained, and to the folios of the corresponding credits and debits respectively.

- (2.) An order check book, in the Form (B.), which shall contain all orders given by the highway board for stores or other articles or for work, and counterfoils of such orders, and forms of the invoices to accompany commodities supplied, or to be delivered when work is done. Such orders, when signed by the clerk, together with the forms of invoice, shall be detached from the said book, and issued to the tradesmen or other persons dealt with or employed, to be returned and disposed of in the manner described thereon; and the counterfoils certified by the clerk's initials, shall be retained in the said book.
- (3.) A petty cash book, in which shall be entered promptly, and in order of date, an account of the sums received and paid by the clerk for petty disbursements, which account shall be balanced quarterly, and laid before the highway board at their ordinary meetings,

**Part X.****TREASURER'S BOOK.**

Art. 4. The treasurer of the highway board shall keep a book according to the Form (C.) in the said schedule, in which shall be entered punctually and accurately an account of all monies received and paid by him on account of the highway board. He shall balance and sign this account quarterly, and shall cause the book to be laid before the highway board when required by them.

**DISTRICT SURVEYOR'S ACCOUNTS.**

Art. 5. The district surveyor shall punctually enter up and accurately keep the following books and accounts, according to the forms and directions relating to such books and accounts respectively in this order and in the schedule thereto, namely :

- (1.) A cash book, Form (D.), in which shall be entered in order of date under the several headings indicated in the form, all sums received or paid by him on behalf of the highway board (excepting those entered in his petty cash book, which may be transferred in gross sums), with the date of receipt or payment, and a reference as regards items of expenditure to the folios of the wages book or contract book in which the detailed particulars are entered; and as regards "tradesmen's bills and miscellaneous" expenses of repairs, a reference to the number of the invoice in each case. This book shall be balanced at the end of each quarter, and at such other times as the highway board may direct.
- (2.) A contract book, Form (E.), the pages of which shall be arranged so as to form divisions under the four following headings, viz.,
  1. Manual Labour.
  2. Team Labour.
  3. Materials.
  4. Improvements,

and under those several headings the particulars of the work performed under contract, as well as the amounts payable in respect thereof and the payments (if any) made to contractors by the district surveyor, shall be entered from time to time according to the arrangement of the columns in each division, the particulars as respects main roads, district roads, and existing turnpike roads being shown separately in the columns provided for that purpose. The date of payment and the folio of the cash book to which the payments are transferred shall also be inserted in connection with each entry.

There shall also be entered under the heading of materials the particulars indicated in the form as to materials supplied by contractors.

The sums entered under each of the four headings above named in the columns headed "amounts payable under contract" shall be cast up at the foot of each page, and the totals as brought forward, cast up at the end of each quarter.

- (3.) A wages book, Form (F.), in which shall be entered in respect of each parish in the district the names of the labourers employed and paid by the district surveyor, the days on and places at which they were so employed, the rate of pay and the amount of wages earned, together with the date of payment and a reference to the folio in the cash book to which the payments are transferred.

The district surveyor, or other person making the payments on his behalf, shall, at the time of payment, obtain the signatures of the labourers in the column provided for that purpose, or if any of them are unable to write,

**Part X.**  

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their marks shall be affixed, attested by the initials of the district surveyor or of such other person.

At the end of each month, or of such shorter period as the H. Board may direct, the wages book, as regards each parish in which labourers have been employed by the district surveyor during that period, shall be submitted by him to the waywarden of that parish, or to one of such waywardens, if there be more than one.

- (4.) A receipt check book, Form (G.), containing receipts and counterfoils in the form prescribed, each receipt and counterfoil bearing a corresponding number, and the numbers being printed thereon in consecutive order. Whenever money is received by the district surveyor from any other source than the H. Board, he shall duly fill up one of the receipts and counterfoils, and shall deliver the receipt (stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary) to the person making the payment, and shall retain the counterfoil in the book.
- (5.) A stock and stores account, in the Form (H.), in which the district surveyor shall keep an account of all materials, tools or other articles intrusted to his charge, and shall show how the same shall have been disposed of and what remains in store. This book shall be balanced yearly and laid before the H. Board from time to time as required by them.
- (6.) A petty cash book, in which shall be entered promptly, and in order of date, an account of the sums received and paid by the district surveyor for petty disbursements, which ac-

count shall be balanced quarterly, and laid Chap. XXX. before the H. Board at their ordinary meetings.

#### CLOSING AND EXAMINATION OF ACCOUNTS.

Art. 6. All the accounts of the H. Board and their officers shall be made up and balanced to the 25th day of March in every year, and shall be submitted to the H. Board at their first meeting after that day.

#### FINANCIAL STATEMENT.

AND WHEREAS by section 3 of "The District Auditors Act, 1879," it is enacted as follows :

"Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit, held in pursuance of section six of the Poor Law Amendment Act, 1866), a financial statement in duplicate in the prescribed form and containing the prescribed particulars ; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement."

NOW THEREFORE, We, the Local Government Board, hereby further order as follows :

Art. 7. The financial statement to be prepared and submitted to the district auditor in duplicate by the H. Board as a local authority under sect. 3 above recited, shall, from and after the 25th day of March,

**Part X.** 1880, be in the Form (I.) in the schedule to this order, and shall contain the particulars therein specified or referred to, and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement.

#### PAROCHIAL STATEMENT.

Art. 8. The statement which by sect. 9 of "The Highways and Locomotives (Amendment) Act, 1878" (a), the H. Board are required, within 30 days after the completion of the audit, to furnish to each member of the board and to the overseers of the parishes in the highway district, shall, from and after the 25th day of March, 1880, be in the Form (L.) in the schedule to this order.

#### NOTICE OF AUDIT: PRODUCTION OF BOOKS.

Art. 9. The district auditor shall audit the accounts of the H. Board and their officers once in every year, that is to say, as soon as may be after the 25th day of March. Provided always, that if the district auditor shall be required by the Loc. Gov. Bd. to hold an extraordinary audit, either of the whole or of any portion of the accounts, in addition to the ordinary audit, all the provisions herein contained, with reference to the ordinary audit, shall, so far as they may be applicable, apply to such extraordinary audit.

Art. 10. The district auditor, in respect of every ordinary audit, shall give to the clerk, the treasurer, and the district surveyor 14 days' notice in writing of the time and place on and at which he intends to commence the audit of the accounts. The district auditor shall also give the like notice to the waywarden or waywardens for each of the highway parishes in the district.

Art. 11. The clerk and the other officers of the H. Board who by law are liable to account to the district auditor shall attend at the time and place appointed by him for

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(a) *Ante*, p. 262.

the audit of their accounts, and shall submit to him all books, documents, and vouchers containing or relating to their accounts ; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer having an interest in such accounts, but to such extent and in such manner only as will not, in the judgment of the said district auditor, interfere with the audit. Chap. XXX.

#### MODE OF AUDIT.

Art. 12. In auditing the accounts, the district auditor shall see that they have been kept and are presented in proper form, that the particular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vouchers and authority. He shall ascertain whether all sums received, or which ought to have been received, are brought into account, and shall examine whether the expenditure is in all cases such as might lawfully be made. He shall also reduce such payments and charges as are exorbitant; shall surcharge monies not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss : and shall disallow and strike out such payments as are not authorized by law.

Art. 13. When the district auditor disallows any payment or surcharges any sum upon any person he shall declare the ground of his decision, and offer to state such ground in writing, if required by the person aggrieved to do so, in the proper book of account forthwith, or as soon as the arrangements for the business of his audit will permit, and shall report such disallowance or surcharge to the Loc. Gov. Bd.

Art. 14. The district auditor shall examine and collate the several books and papers of account : and shall ascertain that the several entries correspond with and balance each other, where such balance may be required ;



**Part X.** but in case of any error caused by inadvertence or accident in any account he may require the officer rendering it to correct the same, and the officer shall make the necessary correction, and the district auditor shall then deal with the account so corrected. But if the officer shall refuse to do so, the district auditor shall himself make the correction, and report the circumstances of the case to the Loc. Gov. Bd.

Art. 15. The district auditor shall compute the several accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time to which the audit relates; and he shall state the balance in words at length, and certify the same by his signature or initials, and add the date of the audit; and when he certifies any sum or other matter to be due he shall, as far as practicable, enter his certificate and his reasons for the same (when they are required) in some part of the book of account which shall be free from other writing.

Art. 16. The district auditor shall receive any objection made by a ratepayer, or any person aggrieved, against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same; and shall examine into the merits of such objection, and make a decision respecting the same, stating the grounds thereof, and offering to enter the same in the book of account then being examined, if required to do so, as in the case of a disallowance or surcharge.

Art. 17. If he shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels, relating to the H. District to appear before him, and shall call upon such person to produce any accounts, books, or papers which he may lawfully require; and he shall examine such officer or person as

may then appear, and such accounts, books, and papers as may be produced before him, respecting such account, item, or charge. Chap. XXX.

Art. 18. If the auditor find that any money, goods, or chattels belonging to the H. Board, have been purloined, embezzled, wasted or misapplied, or that any deficiency or loss has been incurred by the negligence or misconduct of any officer or other person accounting, and shall surcharge such officer or person with such amount or value in his account, he shall submit a statement of such surcharge to the H. Board as soon as he conveniently can do so.

Art. 19. The personal representatives of an officer accountable under this order, dying before the audit of his accounts, shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased officer, and all regulations affecting the accounts of such officer shall, so far as may be otherwise lawful, affect the accounts of his personal representatives.

Art. 20. The district auditor shall, at the close of each audit, transmit to the Loc. Gov. Bd. a statement in the Form (M.) in the said schedule, showing which of the books directed by this order to be kept is not kept, or is imperfectly kept, or kept in a form different from that prescribed by the Loc. Gov. Bd.

#### INTERPRETATION OF TERMS.

Art. 21. In this order and in the forms set forth in the schedule thereto,—

“Highway district” means a district constituted in pursuance of the H. Act, 1862, and the H. Act, 1864, or one of such Acts.

“Highway board” means the highway board having jurisdiction within a H. District.

“Clerk” means the clerk to the H. Board.

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“District surveyor” includes an assistant surveyor, where such an assistant is appointed, and where he may be required by the H. Board, under the direction of the district surveyor, to perform any of the duties herein prescribed.

“Main roads” means roads so constituted under “The Highways and Locomotives (Amendment) Act, 1878.”

“Manual labour” means manual labour employed in the actual execution of repairs, as distinct from such labour employed in obtaining, delivering, or preparing materials for repairs, and includes contract work for repairs where such repairs are let by contract under sect. 52 of “The H. Act, 1864” (a), and where the contract is not made exclusively for the purposes hereinafter described under either of the heads of “team labour” or “materials.”

“Team labour” means labour of that kind employed in the collection, delivery, or distribution of materials for the purpose of executing repairs, or in the actual execution thereof, and includes such labour employed under any contract entered into for those purposes exclusively, under the sect. last above mentioned.

“Materials” means stone or other materials for repairs, and includes the cost of purchasing, getting, carrying, or preparing such materials, and of delivering the same other than by means of team labour. It also includes any such cost incurred under any contract entered into for those purposes exclusively under the section last above-mentioned, as well as damage to land in getting materials for the purpose of repairs, and royalty or rent of pits or quarries for that purpose.

“Tradesmen’s bills” includes the cost of tools, implements, and other stock supplied by tradesmen for repairs, and not hereinbefore included in the

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(a) *Ante*, p. 253.

term "materials," and the cost incurred in repairs of drains, bridges, and fences, executed by tradesmen; and when used in connection with "main roads" means tradesmen's bills for repairs incurred for main roads exclusively. Chap. XXX.

"Improvements" means—

- (1.) The conversion of any road that has not been stoned into a stoned road :
- (2.) The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges :
- (3.) The doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair :
- (4.) The abolition of tolls, where effected under sect. 15 of the Act 35 & 36 Vict. c. 85 (b).

The following forms given in the schedule to this order can be obtained at Shaw and Sons, Fetter Lane, E. C.:—

Form A.—The Ledger.

Form B.—The Order Check Book.

Form C.—The Treasurer's Book.

Form D.—District Surveyor's Cash Book.

Form E.—District Surveyor's Contract Book.

Form F.—Wages Book.

Form G.—Receipt Check Book.

Form H.—Stock and Stores Account.

Form I.—Financial Statement for the Year.

Form K.—Loan Account for Year.

Form L.—Parochial Statement.

Form M.—Statement of District Auditor in reference to Books.

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(b) *Ante*, p. 345.

**Part X.****GENERAL ORDERS FOR ACCOUNTS.****HIGHWAY PARISHES.**

The following letter was sent to the surveyors of highways with the general order for accounts next following:—

**HIGHWAY PARISH ACCOUNTS.**

Local Government Board,  
Whitehall, S.W.,  
11th April, 1881.

SIR,

I am directed by the Loc. Gov. Bd. to state that they have had under their consideration the expediency of amending their order of the 26th of May, 1879, with the view of simplifying the accounts to be kept by surveyors of highways and collectors in parishes which are not included in a highway district.

The requirements of the statute in regard to the separation of expenditure for the repairs of main roads involve a sub-division of headings and the introduction of many details which would otherwise be unnecessary in the accounts. The board, however, have come to the conclusion that one of the present books—namely, the Annual Summary of Quarterly Receipts and Expenditure—may be dispensed with, and that the Repairs Expenditure Account and the General Receipt and Expenditure Account may be made yearly instead of quarterly accounts. By these means the time and trouble of frequent castings will be saved, especially in the Repairs Expenditure Account.

The board have issued an order (two copies of which are enclosed) embodying the above amendments and various other minor alterations in the forms, which will have the effect of making the accounts much more simple.

The labourers' signatures are dispensed with in cases **Chap. XXX.** where the surveyor receives no remuneration, and where there is no paid collector of the highway rates.

The form of financial statement under "The District Auditors Act, 1879," has been somewhat altered, and provision has been made in it for showing the balances on each side.

It will be seen from Article 1 that the order of the 26th of May, 1879, is rescinded, and that the new order takes effect forthwith, subject to the following exceptions:—

1. The financial statement for the year ended the 25th of March last is to be made in the old form.
2. The existing forms of account may be used instead of the new forms until the 25th of March next, if the surveyor thinks fit; or—
3. The existing forms may until that date be altered and adapted to the forms prescribed by the new order.

I am, Sir,

Your obedient Servant,

JOHN LAMBERT,

*To the Surveyor of Highways.*

*Secretary.*

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The following order was made by the Local Government Board on the 9th April, 1881 :

To the Surveyors of Highways, for the time being,  
of the several highway parishes not in highway districts;

To the collectors of highway rates, for the time being,  
of the said highway parishes respectively;

To the several district auditors authorized for the  
time being to audit the accounts of the said surveyors and collectors respectively;

And to all others whom it may concern.

WHEREAS by sect. 9 of "The Highways and Locomotives (Amendment) Act, 1878" (*ante*, p. 262), it is

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enacted that the accounts of the highway authority of every highway district and highway parish shall be made up in such form as the Loc. Gov. Bd. shall from time to time prescribe, and shall be balanced to the 25th day of March in each year ;

And whereas by sect. 5 of "The District Auditors Act, 1879," it is enacted as follows : [see this section, *ante*, p. 485]

And whereas in pursuance of the above-recited enactments the Loc. Gov. Bd., by an order dated the 26th day of May, 1879, prescribed regulations with respect to the mode of keeping and auditing the accounts of the surveyors of highways of the several highway parishes not included in highway districts, and of the collectors of highway rates in those parishes ;

And whereas it is expedient that the said order should be rescinded to the extent herein-after specified, and that other regulations should be substituted for those contained in that order :

NOW THEREFORE, we, the Loc. Gov. Bd. hereby order as follows :—

Art. 1. The said order dated the 26th day of May, 1879, is hereby rescinded.

Provided as follows :—

1. The financial statement for the year ended the 25th day of March, 1881, shall be in the form prescribed by the said order.
2. In any highway parish where the surveyor may think fit, the accounts of such surveyor, or of the collector, for the year ending the 25th day of March, 1882, may be kept in the forms prescribed by the said order dated the 26th day of May, 1879, and in such case the provisions of that order shall apply till the termination of that year, and the financial statement for the year shall be in the form prescribed by such order.
3. Where the form of any book or account prescribed by this order differs from that prescribed for

such book or account by the order rescinded as above, the form now in use may forthwith be altered and adapted as nearly as may be to the form herein prescribed for such book or account. Chap. XXX.

Art. 2. Subject to the provisoes to Article 1 of this order, the following regulations shall henceforth be observed in regard to the accounts of the surveyor of every highway parish not included in any highway district, such surveyor being a highway authority within the terms of the section last-above recited, as well as to such accounts as may be kept by collectors of highway rates, for the time being, in such parishes respectively, and to the audit of such accounts, except in so far as the Loc. Gov. Bd. may from time to time assent to any departure from such regulations.

Art. 3. The surveyor shall punctually enter up and accurately keep a rate book and rate collection account, in the Form A. in the schedule to this order.

In the portion of the said form headed "rate book" shall be inserted the particulars indicated by the headings of the several columns numbered from 1 to 5, both inclusive, and before any rate is presented to the justices for allowance, the surveyor shall sign a declaration, in words at length, of the total amount of the rate so presented for allowance, according to the form of declaration set forth in the said Form A., or to the like effect.

If the surveyor shall deem it convenient, the rate may be divided into several portions corresponding with the several divisions of the parish, if any, so as to bring all the rateable property of each division together, and there may be separate series of numbers for the assessments in every division; and he may in like manner bring together in the rate separate classes of rateable property.

The several columns of the rate book and rate collection account which contain the annual value, the rate in the pound assessed, the recoverable arrears, and the



**Part X.** total amount to be collected, shall be added up at the foot of every page, and the several totals shall be ascertained and set forth at the foot of the rate, before any sum of money in respect of the said rate is collected.

Where there is a collector, the portion of the said Form A. headed "rate collection account," shall, if the surveyor so direct, be entered up by such collector, instead of by the surveyor; and the collector shall also enter in the other portion of the said form all such particulars of every assessment as he shall be directed by the surveyor to enter therein.

The portion of the said Form A. headed "rate collection account" shall, whether it be entered up by the surveyor or by the collector, be signed by the surveyor before the book is presented to the district auditor.

Art. 4. In every case where there is no collector, the following regulations numbered (1), (2), (3), (4), and (5) shall apply :

- (1.) Where there are more than 30 ratepayers on the rate book the surveyor shall, and where there is a less number of ratepayers the surveyor may, use a rate receipt check book, in the Form B. in the said schedule.
- (2.) The receipts and counterfoils in this book shall be numbered consecutively with numbers corresponding with those in the rate book, and demand notes shall be printed in the rate receipt check book, in the form prescribed in the said schedule, and such demand notes shall be signed by the surveyor and numbered so as to correspond with the numbers of the respective receipts.
- (3.) When the amount of the rate shall be received from any person assessed, the receipt applicable to such person's assessment shall, at that time and not before, be signed by the surveyor and detached from the rate receipt

check book, and shall be delivered, stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary, to the person making the payment, and the counterfoil shall be retained in the book. Chap. XXX.

- (4.) In the receipt so delivered and in the counterfoil so retained the true date of the payment shall be inserted.
- (5.) If upon the closing of any rate not collected there shall remain in the rate receipt check book any receipts made out for such rate unused, the surveyor shall enter upon each of such receipts the reason for not using it, and date and sign such entry.

Art. 5. Where there is a collector, the regulations contained in Art. 4, Nos. (2), (3), (4), and (5) shall apply to him, and the rate receipt check book shall be filled up and used by him instead of by the surveyor.

The collector, before he shall proceed to issue demand notes or to collect any rate, shall prepare demand notes and receipts in one book, or in several, if so directed by the surveyor, in the aforesaid Form B., such demand notes, as well as the receipts and the counterfoils thereof, being numbered with consecutive numbers corresponding with those in the rate book, and properly fill in the same respectively with the names of the several ratepayers, and the sum to be collected from each. He shall then submit every such rate receipt check book, so numbered and filled up, to the surveyor before he proceeds to collect the rate; and the surveyor shall cause the correctness of the numbering, and the correspondence of the sums, and of the names filled in, with the rate book to which they relate, to be ascertained, and on the leaf next after the last of the receipts so made out in respect of any one rate the surveyor shall certify the fact that such rate receipt check book has been examined and ascertained to be correct, and shall state in words at length

**Part X.** the number of receipts filled up for the rate then to be collected, which certificate shall be in the form set forth in the said schedule, and shall be signed by the surveyor and correctly dated.

Art. 6. Where, in the opinion of the surveyor, the circumstances of the parish render it expedient, the receipts (and corresponding counterfoils) in the rate receipt check book, instead of being prepared before the collection of the rate and numbered consecutively according to the rate book, may each of them be filled up at the time when the payment of the assessment to which it relates is actually made, the numbers being printed beforehand on the receipts and counterfoils in consecutive order.

Provided that in such cases :

- (1.) Whenever the surveyor or the collector (as the case may be) receives the rate, he shall insert in the receipt given and in the counterfoil retained the number (or numbers) in the rate book of the assessment or assessments to which they relate.
- (2.) Where more than one rate receipt check book is required for one rate, the printed consecutive numbers shall run on without interruption throughout all the receipt check books used for such rate.
- (3.) When a new rate is made, all the unused receipts for the former rate shall, where the rate receipt check book is used by the collector, be delivered by him to the surveyor.
- (4.) The demand notes shall form a separate book, still bearing the same numbers of the assessments as are entered in the rate book.

Art. 7. The surveyor shall also punctually enter up and accurately keep the following accounts according to the forms and directions relating to such accounts

respectively in this order and in the schedule thereto, Chap. XXX.  
namely,—

(1.) A repairs expenditure account, in the Form C., the pages of which shall be arranged so as to form divisions under the four following headings :

1. Manual Labour ;
2. Team Labour ;
3. Materials ;
4. Tradesmen's bills and miscellaneous expenses for repairs ;

and under those several headings the particulars of the expenditure incurred in respect of each shall be entered from time to time, in order of date and according to the arrangement of the columns in each division, the amounts paid being shown separately as regards main roads and parish highways in the columns provided for that purpose, with date of payment.

The surveyor at the time of making the payments to the labourers, shall obtain their signatures in the column provided for that purpose, or if any of them are unable to write, they shall affix their marks, which must be attested by the initials of the surveyor or other person making the payments on his behalf : Provided that in parishes where the surveyor does not receive any remuneration for the performance of his duties, and there is no paid collector of the highway rate, the surveyor may abstain from obtaining such signatures or marks.

The sums entered under each of the four headings above named, in the columns headed "amounts paid," shall be added up, and the totals for the year carried into the receipt and expenditure account.

**Part X.**  

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- (2.) A receipt and expenditure account (Form D.), in which shall be entered in order of date, all sums received or paid by the surveyor on behalf of the parish, whether in respect of repairs or otherwise, with the date of receipt or payment, and a reference as regards items of expenditure for repairs, to the folio of the repairs expenditure account in which the detailed particulars are entered. This book shall be balanced up to the 25th day of March in each year, and with the repairs expenditure account shall be submitted to the district auditor with full bills of particulars and receipts for all payments charged other than wages.
- (3.) A stores account (Form E.), in which shall be entered the quantity or number of materials, tools, implements, and other stores for the repair of the highways received and consumed during each year, with the other particulars set forth in the form.

**FINANCIAL STATEMENT.**

And whereas by sect. 3 of "The District Auditors Act, 1879," it is enacted as follows: [see this sect., *ante*, p. 491.]

Now therefore, we, the Loc. Gov. Bd., hereby further order as follows:

Art. 8. The financial statement to be prepared and submitted to the district auditor in duplicate by the surveyor as a local authority under sect. 3 above-recited, shall, for the year ending the 25th day of March, 1882, (subject to the proviso No. 2 to Article 1 of this order), and thenceforth, be in the Form F. in the schedule to this order, and shall contain the particulars therein set forth; and the certificate of the

district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement. Chap. **XXX.**

#### CLOSING AND EXAMINATION OF ACCOUNTS.

Art. 9. All the accounts of the surveyor and the collector shall be made up and balanced to the 25th day of March in every year.

#### NOTICE OF AUDIT : PRODUCTION OF BOOKS.

Art. 10. The district auditor shall audit the accounts of the surveyor and the collector once in every year, that is to say, as soon as may be after the 25th day of March. Provided always, that if the district auditor shall be required by the Loc. Gov. Bd. to hold an extraordinary audit, either of the whole or of any portion of the accounts, in addition to the ordinary audit, all the provisions herein contained with reference to the ordinary audit shall, as far as they may be applicable, apply to such extraordinary audit.

Art. 11. The district auditor, in respect of every ordinary audit, shall give to the surveyor 14 days' notice in writing of the time and place when and at which he intends to commence the audit of the accounts.

Art. 12. The surveyor and collector shall attend at the time and place appointed by the district auditor for the audit of their accounts, and shall submit to him all books, documents, and vouchers containing or relating to their accounts; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer having an interest in such accounts, but to such extent and in such manner only as will not, in the judgment of the district auditor, interfere with the audit.

**Part X.****MODE OF AUDIT.**

Art. 13. In auditing the accounts, the district auditor shall see that they have been kept and are presented in proper form ; that the particular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vouchers and authority ; and he shall ascertain whether all sums received, or which ought to have been received, are brought into account : and he shall examine whether the expenditure is in all cases such as might lawfully be made ; and he shall reduce such payments and charges as are exorbitant ; shall surcharge monies not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss ; and shall disallow and strike out such payments as are not authorized by law.

Art. 14. When the district auditor disallows any payment or surcharges any sum upon any person, he shall declare the ground of his decision, and offer to state such ground in writing, if required by the person aggrieved to do so, in the proper book of account forthwith, or as soon as the arrangements for the business of his audit will permit ; and shall report such disallowance or surcharge to the Loc. Gov. Bd.

Art. 15. The district auditor shall examine and collate the several books and papers of account, and shall ascertain that the several entries correspond with and balance each other, where such balance may be required ; but in case of any error caused by inadvertence or accident in any account, he may require the officer rendering it to correct the same, and the officer shall make the necessary correction, and the district auditor shall then deal with the account so corrected. But if the officer shall refuse to do so, the district auditor shall himself make the correction, and report the circumstance of the case to the Loc. Gov. Bd.

Art. 16. The district auditor shall compute the Chap. XXX.  
several accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time to which the audit relates; and he shall in the receipt and expenditure account, state the balance in words at length, and certify the same by his signature or initials, and add the date of his audit; and when he certifies any sum or other matter to be due he shall, as far as practicable, enter his certificate and his reasons for the same (when they are required) in some part of the book of account which shall be free from other writing.

Art. 17. The district auditor shall receive any objection made by a ratepayer, or any person aggrieved, against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same, and shall examine into the merits of such objection, and make a decision respecting the same, stating the grounds thereof, and offering to enter the same in the book of account then being examined, if required to do so, as in the case of a disallowance or surcharge.

Art. 18. If he shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels relating to the highway parish, to appear before him, and shall call upon such person to produce any accounts, books, or papers which he may lawfully require, and he shall examine such officer or person as may then appear, and such accounts, books, and papers as may be produced before him respecting such account, item, or charge.

Art. 19. If the auditor find that any money, goods, or chattels belonging to the highway parish have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has been incurred by the negligence or misconduct of any officer or other person



**Part X.** accounting, he shall surcharge such officer or person with such amount or value in his account.

Art. 20. The personal representatives of an officer accountable under this order, dying before the audit of his accounts, shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased officer, and all regulations affecting the accounts of such officer shall, so far as may be otherwise lawful, affect the accounts of his personal representatives.

Art. 21. The district auditor shall, at the close of the audit of the accounts relating to each highway parish where there are any defects in such accounts, transmit to the Loc. Gov. Bd. a statement in the Form G. in the said schedule, showing which of the books directed by this order to be kept is not kept, or is imperfectly kept, or kept in a form different from that prescribed by the Loc. Gov. Bd. He shall also transmit to the Loc. Gov. Bd. at the close of each audit a certificate in the Form H. in the said schedule in respect of the several highway parishes within each poor law union as to which he finds that there has been no default.

#### INTERPRETATION OF TERMS.

Art. 22. In this order and in the forms set forth in the schedule thereto—

“Highway parish” means a parish or place capable of being included in a highway district in pursuance of the H. Acts, 1862 and 1864, or one of such Acts.

“Surveyor” means any surveyor or surveyors of highways, being the highway authority for the time being.

“Collector” means a collector of highway rates duly appointed under the statutes in that behalf.

“Main roads” means roads so constituted under

"The Highways and Locomotives (Amendment) Chap. XXX.  
Act, 1878."

"Manual labour" means manual labour employed in the actual execution of repairs, as distinct from such labour employed in obtaining, delivering, or preparing materials for repairs.

"Team labour" means labour of that kind employed in the collection, delivery, or distribution of materials for the purpose of executing repairs, and includes such labour employed under any contract entered into for those purposes exclusively under sect. 46 of "The H. Act, 1835" (a).

"Materials" means stone or other materials for repairs, and includes the cost of purchasing, getting, carrying, or preparing such materials, and of delivering the same other than by means of team labour. It also includes any such cost incurred under any contract entered into under the sect. last above mentioned, where the contract is not made exclusively for the purposes above described under the head of "team labour," as well as damage to land in getting materials for the purpose of repairs, and royalty or rent of pits or quarries for that purpose.

"Tradesmen's bills" includes the cost of tools, implements, and other stores supplied by tradesmen for repairs, and not hereinbefore included in the term "materials," and the cost incurred in repairs of drains, bridges, and fences, executed by tradesmen; and when used in connection with "main roads," means tradesmen's bills for repairs incurred for main roads exclusively.

The following forms, which are given in the schedule to the above order, can be purchased at Shaw and Sons, the publishers of this work:—

Form A.—Rate Book and Rate Collection Account.

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(a) *Ante*, p. 102.

**Part X.**  

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Form B.—Rate Receipt Check Book.

Form C.—Repairs Expenditure Account.

Form D.—Receipt and Expenditure Account.

Form E.—Stores Account as to Materials, &c., for the Repair of the Highways.

Form F.—Financial Statement, showing Receipts and Expenditure for Year.

Form G.—Statement of Auditor for the Year in reference to Surveyors and Collectors Books.

Form H.—Certificate of Auditor of Audit of Accounts.

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PART XI.  
HIGHWAYS IN SOUTH WALES.

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Cap. XXXI.

CHAPTER XXXI.

23 & 24 VICT. CAP. 68.

*An Act for the better Management and Control of the  
Highways in South Wales (a).*

[6th August, 1860.]

WHEREAS an Act was passed, 14 & 15 Vict. c. 16, for the better management and control of the highways in South Wales: And whereas, in pursuance of the said Act the 6 counties of South Wales have been divided by the county roads boards of their respective counties into districts for the better repair and maintenance of the highways: And whereas it is expedient that the said Act should be repealed and other provisions be made in lieu thereof: Be it therefore enacted, &c., as follows:

I. The said Act shall be and is hereby repealed: Recited Act repealed, but repeal not to affect districts or appointments.  
Provided that nothing in this Act, except as hereinafter provided, shall in any way affect or alter the aforesaid highway districts, or the appointments of any officers, but such districts shall remain for the purposes of this

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(a) See H. Act, 1862, s. 7, cl. 1, *ante*, p. 191.

**Part XI.** Act, and such officers shall respectively hold office on the like tenure as if appointed under this Act.

Districts  
may be  
altered from  
time to time.

II. Provided also, that it shall be lawful for the said county roads boards of the several counties of South Wales respectively from time to time, if they shall see occasion, to alter the limits of any such district in their respective county, either by consolidating the whole or any part of it with any other district, or by dividing it into one or more districts; and the order by which such alteration is made shall within one month after the making thereof be published, together with a description or statement of the boundaries of such districts, or of the parishes comprised therein respectively, by advertisement in one or more of the newspapers circulating in the county in which the order is made, and notice thereof shall be given to the clerks of such districts as are affected thereby.

Power to  
county roads  
board to  
appoint and  
dismiss  
surveyors.

III. Every county roads board acting in and for each of the said counties respectively shall, by writing, upon which no stamp or other duty shall be payable, appoint one surveyor for each district declared as aforesaid to overlook the management and repairs of the several highway districts in their county, and shall also determine the salaries to be paid to such surveyors respectively; and the board may from time to time remove the said surveyors, and so often as the said offices or any of them shall become vacant shall appoint other fit and proper persons for the same; and the salaries of such surveyors shall be paid out of the highway rate, and shall be, by an order made by the county roads boards, apportioned amongst and charged upon the parishes within each respective district, in the same manner and in the same proportions as the county rate shall be chargeable at the time the order is made: provided nevertheless, that such district surveyor shall not expend monies levied in any one of the parishes within his district, except for the use and benefit of the parish

in which it is so levied, unless with the consent of the inhabitants of such parish in vestry assembled, for the purpose of carrying on repairs or beneficial improvements for the common benefit of the parishes aforesaid, and shall keep separate and distinct accounts for each parish within his district, and such accounts shall specify the different sums and the persons to whom and by whom the same shall have been paid. **Cap. XXXI.**

IV. All land and property vested, or which, if this Act had not been passed, would have been vested, in any surveyor of highways of any parish elected or appointed under the H. Act, 1835, and all the powers of letting or otherwise disposing of any such land or property vested in, or which, if this Act had not been passed, would have been vested in or exercisable by such surveyor, and all rents or other income of land or property which such surveyor is, or, if this Act had not been passed, would have been entitled to receive, shall, upon and after the cesser under this Act of the powers of such surveyor, be vested in and exercisable and received by the highway board of the district in which such parish is comprised; and all tools, materials, implements, matters, and things purchased or provided, or thereafter to be purchased or provided, for the use or repair of the highways of any parish or district, and the scrapings of such highways, and all books, papers, writings, and accounts relating to such highways, shall be vested in the highway board of the district in which the same are situate, and all land, chattels, and property whatsoever hereby transferred to any highway board shall be vested in such board for the benefit of the parish to which the same belongs, or to the repairs of the highways of which the same, or the rents, income, and proceeds thereof, would have been applicable, and credit shall be given to such parish for such rents, income and proceeds accordingly, and in the case of any such chattels, belonging to or provided for any parish which

Transfer of  
property  
and powers  
vested in  
existing sur-  
veyors of  
highways  
to highway  
boards.

**Part XI.**

may be made available for the common use or benefit of the several parishes within the district of such highway board, such highway board shall give such parish credit for what they may consider the value thereof, as for so much money received in respect of such parish.

**Duties of  
district  
surveyor.**

V. The surveyor of highways of each district shall subject to the control of the highway board for such district, maintain and keep in repair the highways which the several parishes in such district may be liable to repair, and for that purpose shall on behalf of the highway board make all necessary contracts for highway materials and for cartage and other works for the repair of the highways, and shall superintend the execution of all such works, and shall make all such payments as by the highway board may be ordered to be made by him, and keep true and particular accounts of all monies received by him, and of the application thereof, and shall keep separate and detailed accounts of the expenditure in or on account of each parish, and shall at every ordinary meeting of the highway board produce his accounts for examination and allowance by the board, and report to such board such circumstances in relation to the state of the highways in the district and the other matters aforesaid as may require the order or direction of the board, and as to the progress or completion of all works which may have been ordered by the board, and shall submit to the board an estimate of the expense of any proposed work, and shall twice at the least in every year, or oftener if the board direct, report in writing the state and condition of all highways in the district.

**Powers and  
responsi-  
bilities of  
surveyor.**

VI. The surveyor of highways of each district shall, except for the purpose of making, assessing, and levying rates, and producing and verifying his accounts at special sessions, and except as herein otherwise provided, have all duties, powers, and responsibilities, as regards

the parishes in such district, of a surveyor elected under the said H. Act, 1835, and all Acts and provisions not hereby repealed, applicable to such last-mentioned surveyor, shall, save as herein otherwise provided, apply in like manner to a surveyor of highways of a district appointed under this Act, and all penalties and forfeitures or parts thereof payable to such surveyor shall be paid by him to the treasurer of the highway board, to the credit of the parish in respect whereof the same are recovered: provided nevertheless, that such surveyor shall in the exercise of such duties and powers act under the directions and control of the highway board, and shall be indemnified by such board out of the monies coming to the hands of their treasurer in respect of all expenses and liabilities properly incurred by him.

VII. The maintenance and repairs of the several highways situate and being within the several districts which have been or shall be hereafter formed shall, subject to the authority of the said county roads board, be under the care and management of local boards, to be styled highway boards, and which are and shall hereafter be constituted in manner following; that is to say, all persons who are now elected or who shall hereafter be elected guardians of the poor for the parish or parishes contained in such district during the period they are such guardians, and all H. M.'s justices residing within or acting at any petty sessions within or holden for the district, shall constitute the highway board for such district, and such justices shall not by reason of being members of such highway board be incapable of acting as justices of the peace in the execution of this Act, or in any matters relating to the highways under the care and management of said board; and every such board shall be a body corporate by the style of the highway board for the district of (inserting the name of the highway district), and by that name shall have perpetual succession and a common seal, and sue and be

Cap. XXXI.

Highways to be continued under the care and management of existing local boards.



**Part XI.** sued, and have power and authority (without license in mortmain) to hold lands for the purposes of the highways.

Highway boards to hold 4 ordinary meetings every year.

VIII. The highway board for every district shall in every year hold not less than 4 ordinary meetings, and the meetings of such board after their first meeting shall be holden at such convenient place or places, and at such times, as they shall at their first meeting and from time to time thereafter appoint; and one of such meetings shall be appointed for the purpose of auditing the annual accounts of the board as hereinafter provided; and any such board may also hold special meetings, every such special meeting to be called by the clerk to such board, by the direction of the chairman or vice-chairman, or upon the requisition of any 3 members of such board; provided that no business, matter, or question shall be done, discussed, or entertained at any such special meeting other than the special business or matter for which it shall have been called, and which shall be specified in the notice convening such meeting.

Special meetings may be holden.

Adjournment of meeting.

IX. Any meeting of the highway board may be adjourned from time to time to any day and hour and to the same or any other place; and if there be not 3 members of the board present within one hour after the time appointed for holding any meeting then it shall be lawful for the members or member present, or if no member be present, for the clerk to such board, to adjourn such meeting in manner aforesaid.

Notice of special meetings and of meetings by adjournment.

X. Notice in writing of every special meeting of any highway board, and of every meeting of any such board holden by adjournment (whether by adjournment from an ordinary or a special meeting), shall be given by the clerk to such board to every member thereof, and every such notice shall be given or sent by the post or otherwise by the clerk to every such member, or left at his

place of abode, 7 days, or, in the case of a meeting Cap. XXXI. holden by adjournment, 3 days at least before the day appointed for the meeting to which it relates.

XI. The highway board for each district shall elect two members of such board to be the chairman and vice-chairman thereof for the space of one year, and such election shall take place at their first meeting, or at some adjournment thereof, in every year; and the chairman and vice-chairman of each highway board at the commencement of this Act shall continue in office until their successors shall be appointed at the first meeting of the board as aforesaid; and the chairman, or, in case of his absence at the commencement of any meeting, the vice-chairman, shall preside at all meetings of such board, and shall have a casting vote in addition to his vote as a member; and in case at the commencement of any meeting both chairman and vice-chairman be absent, then such other member as may be chosen by the major part of the members present shall preside as chairman of such meeting; and whenever the chairman or vice-chairman shall die or become disqualified, refuse or become incapable to act, such board shall at their ordinary meeting to be holden next after such death, disqualification, refusal or incapacity, elect some other member of such board in his stead.

Chairman  
and vice-  
chairman  
to be elected.

XII. All acts, orders, matters, and things by this Act authorized to be made or done by any highway board may be made or done by the major part of the members of any such board present at any meeting to be holden by virtue of this Act, the whole number present together at such meeting not being less than 3; and all orders made by any such board shall be in writing, and signed by the chairman presiding at the meeting at which the same are made and countersigned by the clerk, and sealed with the seal of the board.

Authenti-  
cation of  
orders.

**Part XI.**

Defect of  
election, &c.,  
of members  
not to vitiate  
proceedings.

**XIII.** No defect in the qualification or election of any person acting as a member of a highway board at any meeting thereof, the majority of the persons assembled at which shall be entitled to act as members of such board, shall be deemed to vitiate or make void any proceedings of such board in which he may have taken part.

Power to high-  
way boards  
to appoint  
clerks.

**XIV.** Any highway board shall have power by writing upon which no stamp or other duty shall be payable, to appoint a fit and competent person to be clerk to such board, and shall also determine the amount of salary to be paid to the clerk; and the clerk, in person, or by such deputy as shall be elected by such board, shall attend all meetings of such board, and shall conduct the correspondence thereof, and enter and keep, in books to be provided for the purpose, notes, minutes, or copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings, and correspondence of such board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the board may direct.

Appointment  
of treasurer.

**XV.** Any highway board shall, at their next general annual meeting after the passing of this Act, by writing upon which no stamp or other duty shall be payable, appoint a fit and competent person to be treasurer of such board, and the said board shall have power to fix, and from time to time to alter as they see fit, the salary, if any, to be paid to such treasurer; and the highway board shall, before the aforesaid treasurer shall enter upon his office, take sufficient security for the due performance by him of the duties of his office; and the treasurer of each highway board shall receive and hold to the account of such board all monies paid to or for the use of such board, and shall make payments thereout under orders of such board, and shall once in every 3 months, on such days as the board may direct, or

oftener if required by the board, make up an account of all monies received and paid by him, and deliver the same to the clerk of the board; and he shall keep separate and distinct accounts for each parish within his district, and such accounts shall specify the different sums, and the persons to whom and by whom the same shall have been paid. Cap. XXXI.

XVI. The salaries to be paid to the clerk and treasurer of each district shall, by an order to be made by the highway board of such district, be paid out of the monies levied for the repair and maintenance of the highways, and shall be apportioned and charged upon the parishes within each respective district in the same manner and in the same proportion as the county rate shall be chargeable at the time such order is made. Salaries of clerk and treasurer, how to be paid.

XVII. The highway board may at any time dismiss any clerk or treasurer so appointed, and as often as the said offices shall become vacant by such dismissal, or by death, resignation, or otherwise, the said highway board shall at their next regular meeting, or as soon after as conveniently may be, appoint some other fit and proper person to fill the same. Power to dismiss clerk, &c.

XVIII. The office of treasurer, clerk, and surveyor of any highway board, or any two of such offices, shall not be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent or servant, one of the other, or of the partner of either of them; and if any person shall accept or hold either the office of treasurer, clerk, or surveyor contrary to this provision he shall forfeit and pay the sum of £100 to any person who shall sue for the same, to be recovered, with full costs of suit, in any court of competent jurisdiction. Two offices not to be held by the same person.

XIX. The highway board for each district shall, subject to the provisions and exceptions in this Act, have Highway boards to

**Part XI.** **the management of the several highways lying within their district, and of the repairing and maintaining of the same, and shall direct the execution of any works which may from time to time be necessary for such purposes; but it shall not be lawful for any person being a member of any highway board, to hold any place, office, or appointment of emolument, or to be a contractor directly or indirectly, or to be concerned or engaged in any contract for making or repairing, or in any way relating to the road or roads in the district for which such person shall act.**

**have the management of the highways.**

**Highway board may contract to repair highways within districts of local boards, &c.**

**XX. The highway board of any district may contract with all or any of the following bodies (that is to say), any local board of health constituted under "The Public Health Act, 1848," any local board constituted under "The Local Government Act, 1858" (a), any commissioners or other body acting under any local Act of parliament, the county roads board, the court of quarter sessions of the county in which the district is situate, and the council of any borough for the repair and maintenance by such highway board of all or any of the highways or turnpike roads under the care of such local board of health, local board, county roads board, commissioners, or other body (as the case may be), or of the highways over and at the ends of bridges which are maintainable at the expense of the county or of any borough, or any other highways which are maintainable at the expense of the borough; and such highway board may contract as aforesaid, upon such terms as to the payments to be from time to time made to such board in respect of their undertaking such repairs and maintenance, and as to the duration and determination of the contract as may be agreed upon between the parties; and any such local board of health, local board, commissioners, county roads board,**

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(a) Now repealed.

or other body, court of quarter sessions, and council Cap. XXXI. may contract as aforesaid with such highway board; and while any contract made under this provision is in force the highway board and their surveyor shall, in respect of the repairs and maintenance of the highways and roads to which such contract relates, have and perform the same powers and duties and be subject to the same responsibilities as with regard to highways within the district of such board, and the other contracting party shall be divested of all powers, duties, and responsibilities in respect of such repairs and maintenance, and all money payable under such contract shall be paid out of the monies which would have been applicable to defray the expenses of the repair and maintenance of such highways or turnpike roads if such contract had not been made.

XXI. Every highway board, for defraying the repairs, expenses, and apportioned part of expenses chargeable as aforesaid, on each parish within their district, shall from time to time, by order under their seal, require the overseers of such parish to levy, and to pay over to the treasurer of such board, or into any bank in such order mentioned, and within the time or times thereby limited, the sum which, after giving due credit to such parish for all penalties and other monies received in respect thereof, such board may require for the purpose aforesaid (and any such order may be made wholly or in part in respect of expenses incurred at any time within six months before the making of the order, or of expenses to be thereafter incurred); and where any parish within the meaning of this Act is part only of any parish for which overseers are appointed, the highway board shall specify in their order the part of such last-mentioned parish on which any sum required by such board is to be levied.

Expenses of highway board, how to be defrayed.

XXII. The overseers of the poor of the parishes to whom such orders as aforesaid are issued shall levy the

Overseers to levy rates for raising the

**Part XI.** amounts mentioned therein according to the exigency thereof, and shall for that purpose make separate equal pound rates upon their parishes, or the parts thereof respectively upon which the sums specified in such orders are required to be levied, in respect of the sums thereby ordered to be levied, and shall make such rates of such amount in the pound on the annual value of the property rateable as will in their judgment, having regard to all circumstances, be sufficient to raise the sums specified in such orders; and such rates shall be levied on the persons and in respect of the property by law rateable to the relief of the poor in the respective parishes, and shall be assessed upon the net annual value of such property, ascertained by the rate for the time being for the relief of the poor, provided that the rate shall also extend to such woods, mines, and quarries of stone, or other hereditaments, as were before the said H. Act, 1835, usually rated to the highways (a); and the said overseers shall, for the purpose of levying such rates, proceed in the same manner, and have the same powers, remedies, and privileges as for levying money for the relief of the poor, and all such rates shall be allowed in the same manner, and be subject to all the same provisions in relation to appeal and to excusing persons from payment on account of poverty, and otherwise, as the rate for the relief of the poor in the same parish; and such overseers shall pay to the treasurer of the highway board, or otherwise as in such orders directed, the sums mentioned in the orders within the time or respective times specified for that purpose, and the excess, if any, which may have been levied beyond such sums shall be placed to the credit of the parish or part in which the same has been levied; and the said overseers shall, at the time of making any such payment, deliver with the money a note in writing signed by them specifying the amount so paid, which

money re-  
quired by  
highway  
board.

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(a) See H. Act, 1864, sect. 33, *ante*, p. 538.

note shall be kept as a voucher for the receipt of that particular amount; and the receipt of the treasurer of the board, or of any proper officer or person of or belonging to any bank into which such money is so paid, specifying the amount paid to him by the overseers, shall be a sufficient discharge to the overseers for such amount. Cap. XXXI.

XXIII. In every parish in which a paid collector of poor rates shall have been or may hereafter be duly and legally appointed, every such collector shall, if the highway board so direct and authorize him, collect the highway rate for every such parish, and the highway board shall determine the salary or additional salary to be paid to every such collector, and every such collector shall have all the same powers, remedies, and privileges for the levying and enforcing the payment of such rates as the overseers of the poor have under this Act; and it shall be lawful for every highway board, and they are hereby required, to take security from every collector authorized to collect the highway rate under this Act, which security shall be to the full amount of the sum likely to be in the hands of the said collector at any one time. Power to highway board to direct paid collectors of poor rate to collect highway rate.

XXIV. Provided always, that the rate or rates to be levied for defraying any expenses under this Act shall not exceed in any one year the amount in the pound of the rateable value of the property rateable thereto under this Act now by law limited in respect of the highway rate (b). Restriction in amount of rates.

XXV. In case the amount ordered by any such order as aforesaid to be paid by the overseers of any parish be not paid in manner directed by such order, and within the time or times therein specified for that purpose, the overseers shall be liable to be distrained upon. Overseers on non-payment of the rate shall be distrained upon.

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(b) See 41 & 42 Vict. c. 34, s. 7, *post*, p. 540.



**Part XI.**

pose, it shall be lawful for any two justices of the peace, upon the complaint by the board or by any person authorized by them for this purpose, to issue their warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers; and in case the goods of all the overseers be not sufficient to pay the same the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the purposes of this Act, and shall be collected by the like methods.

Special persons may be appointed to levy rates on default of overseers.

XXVI. Any highway board may, in case of any default or neglect of any overseers to pay the amount required by any such order as aforesaid, within the time or times and in the manner directed by such order, appoint persons to levy any money required by such board for the purposes of this Act in any parish, and such persons shall proceed in the same manner, and have the same powers, remedies, and privileges, and be subject to the same regulations and penalties with reference to the levying of such money, as any overseers would have had or been subject to with reference to levying any such money in pursuance of an order of the highway board.

Accounts to be made up to 25th March, and statement to be published.

XXVII. The accounts of every highway board shall be made up and balanced on the 25th day of March in every year, and shall be audited by such board, and signed by the chairman; and such board shall cause a statement to be printed and published in one or more newspapers circulated in their county within 30 days after the said 25th day of March, showing the receipt and expenditure in respect of each parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars, and in such form, as the secretary of state may direct, as hereinafter mentioned.

XXVIII. The clerk to every highway board shall, **Cap. XXXI.** within such 30 days, transmit such statement to one of H. M.'s principal secretaries of state; and any such clerk who shall not within the time aforesaid transmit the said statement to the said secretary of state shall for every such offence, upon a summary conviction for the same before two justices of the peace, be liable to a penalty of £10.

Statement to be sent to secretary of state.  
Penalty for neglect.

XXIX. The secretary of state shall cause the statements so transmitted to be abstracted, and the abstracts thereof to be laid before both houses of parliament, with the other statements in relation to highways required to be abstracted and laid before parliament by the 12 & 13 Vict. c. 35 (a).

Abstract of statements to be laid before parliament.

XXX. It shall be lawful for one of H. M.'s principal secretaries of state to cause to be prepared such forms for such statement as he may from time to time deem suitable, and also from time to time to alter the forms for the annual statement prescribed by the 12 & 13 Vict. c. 35 (a), but no statement shall be transmitted under that Act concerning parishes wholly within a highway district under this Act.

Secretary of state may cause form of statement to be prepared, and alter forms prescribed by 12 & 13 Vict. c. 35.

XXXI. The council of every borough having a separate commission of the peace may, by a resolution of such council at a meeting held for the purpose, in any year after the expiration of the time limited by law for the election of surveyors of highways for that year, or 40 days at the least before the commencement of the time limited for such election, assume the powers of a highway board under this Act; but no such resolution shall be valid unless a month's previous notice of the meeting and of the purpose thereof has been given in

Councils of boroughs having commissions of the peace may by resolution assume the powers of highway boards.

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(a) See 42 & 43 Vict. c. 39, *ante*, pp. 377—379.

**Part XI.** the manner in which notices of meetings of the council are by law required to be given, and two-thirds of the members present at the meeting concur in such resolution; and the chairman of any such meeting may, with the consent of a majority of the members present, adjourn the same from day to day; and notice of such resolution shall be certified under the seal of the corporation of such borough to the clerk of the peace of the county, or (if such borough be situate in more than one county) of each county in which the borough is wholly or in part situate.

Where resolution passed, council to have powers of highway board.

**XXXII.** Any such council which may have assumed the powers of a highway board, by resolution passed and certified as aforesaid, shall, with respect to parishes and parts of parishes within such borough, have and be subject to the powers and obligations vested in or imposed on a highway board constituted under this Act with respect to parishes forming the district of such board, save that such powers shall not extend to authorize the appointment of a separate clerk or treasurer for the purposes of this Act; and the provisions of this Act applicable, in the case of highway districts formed thereunder, to the highway board thereof, and their clerk, treasurer and surveyor, shall, in the case of such borough, be respectively applicable to the council and to the town clerk and treasurer thereof, and to the surveyor of highways to be appointed by such council, as if such borough were a highway district constituted under this Act and such council were the highway board thereof; and all acts to be done by such council by virtue of the powers conferred by this Act shall be done in like manner as if done by virtue of the said Act "for the Regulation of Municipal Corporations in England and Wales" (a); and any such council may, if they think fit, appoint a committee for the purposes of this Act, in like manner

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(a) 5 & 6 Will. 4, c. 76.

as for any of the purposes of such last-mentioned Act, **Cap. XXXI.**  
 the acts of such committee to be submitted as therein  
 provided to the council, for their approval: provided  
 nevertheless, that the expenses incurred in the execu-  
 tion of this Act by the council of any borough or any  
 committee of such council shall be defrayed in manner  
 provided with respect to expenses of highway boards:  
 provided always, that the powers of the council of a  
 borough under this enactment shall not extend, nor  
 shall its district as a highway board be deemed to in-  
 clude any parish or district under any board mentioned  
 in the first section of this Act.

**XXXIII.** From and after the passing of this Act no  
 parochial surveyor shall be elected or appointed in  
 South Wales under the H. Act, 1835, for any parish  
 comprised in such district: provided always that any  
 surveyor whose powers are so to cease as aforesaid shall  
 recover any highway rate made by him before the  
 cesser of his powers, and remaining unpaid, in the same  
 manner as if his power in other respects had not  
 ceased, and the money so recovered shall be paid by  
 him to the treasurer of the highway board of the dis-  
 trict in which such parish is comprised under this Act;  
 and in case such surveyor die or become incapable to  
 act before all arrears of any such rate are recovered,  
 the same may be recovered by the overseers of the poor,  
 who shall have the like power for that purpose as such  
 surveyor would have had, and shall pay the same to  
 such treasurer as aforesaid.

**XXXIV.** The accounts of every such surveyor whose  
 powers shall so determine shall be passed within the  
 like periods respectively after such determination, and  
 in like manner, and under and subject to the like pro-  
 visions in all respects, as if this Act had not been  
 passed, save that it shall not be necessary that such  
 accounts be passed at a special sessions for the high-

No parochial  
 surveyor to  
 be appointed  
 after the  
 passing of  
 this Act.

Accounts of  
 existing sur-  
 veyors to  
 be passed  
 according to  
 present law,  
 and money  
 and effects  
 to be paid  
 and delivered

**Part XI.**

to their  
successors  
appointed  
under this  
Act.

ways, but the same may be passed at a petty sessions; and the provisions of the H. Act, 1835, concerning payment and delivery by a surveyor leaving office, and by the executors and administrators of a deceased surveyor, of money due from him, and books, accounts, papers, writings, tools, materials, implements, and other things, to his successor in office, and all the provisions of such Act applicable in default of such payment and delivery, according to the provisions of the said Act, shall be and remain applicable in relation to all monies, books, accounts, papers, writings, tools, materials, implements, and other things which if this Act had not been passed ought to have been paid and delivered to the successor, under the H. Act, 1835, of such surveyor, as if the highway board of the district in which the parish or parishes is or are comprised for which such surveyor was appointed were the successors in office of such surveyor, and had been appointed under the said Act.

Surveyor of  
highway  
board  
exempted  
from turn-  
pike tolls.

XXXV. No toll shall be demanded by virtue of any Act of Parliament on any turnpike road in any highway district constituted under this Act from the surveyor of the highway board of such district when executing or proceeding to execute his duties as such surveyor, and all provisions applicable to the exemptions in the Act 3 Geo. 4, c. 126, shall apply to and in the case of the exemptions conferred by this enactment.

Power to  
highway  
board to  
order their  
surveyor to  
repair cer-  
tain roads,  
and charge  
the parties  
liable for  
the same.

XXXVI. Where any highway which any body politic or corporate or person is liable to repair by reason of tenure of any land, or otherwise howsoever, is out of repair, the highway board of the district in which such highway is situate may, if they see fit, direct their surveyor to repair the same, and the expenses to be incurred in such repair shall be paid by the party liable to repair as aforesaid; and it shall be lawful for any

justice, upon the application of any person authorized Cap. XXXI. in this behalf by the highway board, to summon the party liable to pay such expenses to appear before two justices at a time and place to be named in such summons, and upon the appearance of the parties, or in the absence of either of them, it shall be lawful for such justices to hear and determine the matter, and make such order, as well as to costs or otherwise, as to them may seem just.

XXXVII. Where any person or corporation is liable, by reason of tenure of lands or otherwise, to repair any highway situate in a highway district, the person or corporation so liable, or the surveyor of highways of the district, may apply to any justice of the peace for the purpose of making such highway a highway to be repaired and maintained by the parish in which the same is situate; and such justice shall thereupon issue his summons requiring such surveyor, or (a) the party so liable to repair such highway as aforesaid, to appear before two or more justices in petty sessions assembled, and the justices at such petty sessions shall proceed to examine and determine the matter, and shall, if they think fit, make an order under their hands that such highway shall thereafter be a highway to be thereafter repaired and maintained by the parish, and shall in such order fix the proportion of the expenses of repairing and maintaining such highway to be annually paid by such person or corporation to the treasurer of the highway board of the district in which such highway is situate, and such order shall be binding upon all persons and parties whatsoever: provided nevertheless, that such justices, instead of fixing the proportion of the expenses of repairing such highway to be annually paid as aforesaid, may, by an order under their hands, fix a certain sum to be paid by such person or corporation to the

Power to  
justices to  
order certain  
highways to  
be made  
highways to  
be repaired,  
&c., by the  
parishes.

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(a) Compare the provisions of H. Act, 1862, s. 35, *ante*, p. 209.

**Part XI.** treasurer of such board, in full discharge of all claims thereafter in respect of the repair and maintenance of such highway; and in default of payment of such last-mentioned sum, or of such annual sum as aforesaid, the clerk of such board may proceed for the recovery thereof in the same manner as any penalties or forfeitures are recoverable under the H. Act, 1835: provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair and maintenance of such highway exceeds £100, the same, when received, shall be invested in the name of the highway board of the district in some public government securities, and the interest and dividends arising therefrom shall be applied by such board towards the repair and maintenance of the highways within the parish in which such highway is situate; but when such sum does not exceed £100, the same, or any part thereof, at the discretion of such highway board, shall from time to time be applied by such board towards the repair and maintenance of the highways within such parish; and from and after the making of such order such highway shall be repaired in like manner and at the like expense as other highways which such parish is liable to repair.

Provisions  
for discon-  
tinuance of  
maintenance  
of unnecessary  
highways.

**XXXVIII.** When any highway board consider any highway within their district unnecessary for public use, they may direct their surveyor to apply to two justices to view the same, and shall authorize him to pay all expenses attending such view (which expenses and other the expenses of the surveyor consequent upon such application shall be expenses chargeable under this Act on the parish in which the highway in question is situate), and thereupon the like proceedings shall be had as in the case where application is made under the H. Act, 1835, to procure the stopping up of any highway, save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall

direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly; and for the purpose of such proceedings under this enactment, such variation shall be made in any notice, certificate, or other matter preliminary to the making of such order as the nature of the case may require: provided always, that if at any time thereafter, upon application of any person interested in the maintenance of such highway, after one month's previous notice in writing thereof to the clerk of the highway board for the district in which such highway is situated, it appear to any court of general or quarter sessions of the peace that from any change of circumstances since the time of the making of any such order as aforesaid under which the liability of the parish to repair such highway has ceased, the same has become of public use, and ought to be kept in repair by the parish, they may direct that the liability of the parish to repair the same shall revive from and after such day as they may name in their order, and such liability shall revive accordingly as if the first-mentioned order had not been made; and the said court may by their order direct the expenses of and incident to such application to be paid as they may see fit.

Cap. XXXI.

XXXIX. And with respect to the adoption of new roads to be maintained as public roads under this Act, be it enacted, that no road or occupation way made or hereafter to be made by or at the expense of any individual or private person, body politic or corporate, shall be deemed or taken to be a public road, to be repaired and maintained according to the provisions of this Act, unless the person, body politic or corporate, proposing to dedicate such road to the use of the public, shall give 3 calendar months previous notice in writing to the district surveyor of the district of his intention to dedicate such road to the use of the public,

Regulations  
as to the  
adoption of  
new roads to  
be maintained  
under this  
Act.



**Part XI.** describing its situation and extent; and the said district surveyor, upon receiving such notice, shall view the same, and shall report to the highways board of the district whether such road is well and properly laid out and made, and whether the same is of sufficient public utility to justify its being kept in repair and maintained as one of the highways of such district; and if the said board shall be satisfied, upon such report or otherwise, that the said road ought to be so kept in repair and maintained, they shall certify in writing accordingly; and such certificate, signed by the chairman of the highway board for the time being, shall be transmitted by him to the county roads board of such county; and thereupon, after the said road shall have been used by the public, and duly repaired and kept in repair by the said person, body politic or corporate, for the space of 12 calendar months, the same shall thenceforth become one of the highways of such county, and shall thereafter be repaired and maintained according to the provisions of this Act.

Proceedings  
in case high-  
ways are not  
kept in re-  
pair.

**XL.** From and after the passing of this Act, if any highway is out of repair, or is not well and sufficiently repaired and amended, and information thereof on the oath of one credible witness is given to any justice of the peace, it shall and may be lawful for such justice and he is hereby authorized and required to issue a summons requiring the surveyor of the district in which such highway is situated, or other person or body politic or corporate chargeable with such repairs, to appear before the justices at some petty sessions in the said summons mentioned to be held within the division in which the said highway may be situate, and the said justices shall either appoint some competent person to view the same, and report thereon to the justices in petty sessions assembled on a certain day and place then and there to be fixed, at which the said district surveyor or other party as aforesaid shall be directed to

attend, or the said justices shall fix a day whereon they Cap. XXXI.  
 or any two of them shall attend to view the said high-  
 way; and if to the justices at such petty sessions, on the day and at the place so fixed as aforesaid, it shall appear, either on the report of the person so appointed by them to view, or on the view of the said justices, that the said highway is not in a state of thorough and effectual repair, they the said justices at such last-mentioned petty sessions shall make an order requiring the said district surveyor to repair the said highway within a time limited therein, and shall make an order requiring the overseers of the poor, or other party or body politic or corporate liable to the repair of the said highway, to pay to the treasurer, at such time or times as they shall direct, either in one sum or by instalments, a sum of money to be therein stated, which shall be equal in amount to the sum which the said justices shall on the evidence produced before them judge requisite for the repairing such highway; and in default of such money being paid within the time so limited, it shall be lawful for any two justices of the peace to issue their warrant for levying the amount of money, or so much thereof as may not be paid within the time limited, by distress and sale of the goods of the said overseers of the poor, and such money, when recovered, shall be applied to the repair of such highway; and in case more parties than one are bound to repair any such highway, the said justices shall direct in their order what proportion shall be paid by each of the said parties; provided nevertheless, that the said justices shall not have power to make such orders as aforesaid in any case where the duty or obligation of repairing the said highway comes in question (a).

Power to justices to order highways to be repaired at the expense of the parties liable.

If money not paid the same to be levied by distress.

(a) It will be seen that in this Act there is no special provision for the case where the district surveyor, when summoned, denies the liability of the parish to repair, nor is there any direction in what manner the repairs are to be executed.

*Held*, that in such a case the 95th sect. of H. Act, 1835, *ante*,

**Part XI.**

Width of roads to be maintained when they cease to be turnpike roads.

**XLI.** All roads hereafter ceasing to be turnpike roads shall on their so ceasing be repaired and maintained by the surveyor or board, or other body liable to maintain the same, to the same width as they are or were required to be while turnpike roads; and all roads heretofore turnpike roads, which have already ceased to be so, shall be repaired and maintained by such surveyor, board, or other body to the present width of such roads, and after the passing of this Act, as regards any road which has ceased or which may cease to be a turnpike road, the erection or making of any building, hedge, ditch, or other fence, or the doing of any other act which would have been deemed an encroachment on any such road if the same had continued to be a turnpike road, shall be deemed an encroachment on a highway, within sect. 69 of the H. Act, 1835 (*ante*, p. 122), although the same may be beyond the distance from the centre of the carriageway mentioned in the said section.

Acts required to be done at special sessions for highways may be done at petty sessions.

**XLII.** It shall not be requisite for the justices of the peace to hold special sessions for executing the purposes of the H. Act, 1835; but all acts and matters which might have been done at such special sessions under the said Act or this Act, or under any other Act of parliament, may be done by two or more justices at any petty sessions.

Provisions of H. Act, 1835, remain in force, except as otherwise provided.

**XLIII.** Except as herein otherwise provided, all the provisions of the H. Act, 1835, shall remain in force and be applicable as well to the highways to be managed under this Act, as to the highways which may continue to be managed under that Act, and the said Act and this Act shall be construed together as one Act.

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p. 152, applies, and the justices are to direct an indictment to be preferred against the parish in the manner therein directed. *E. v. James*, 27 J. P. 676.

The power of levying by distress the expenses of repairing a road is confined to the overseers of the poor, and does not extend to any other party liable to repair.

XLIV. This Act shall extend only to South Wales : **Cap. XXXI.**  
 and in the construction of this Act "South Wales" shall include and comprise the six counties following, and no others, viz., the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan.

Act to extend  
 only to  
 South Wales.

XLV. In the construction of this Act, unless there be something in the subject or context repugnant to such construction, the word "parish" shall mean any parish, place, or district maintaining its own highways, or which, if this Act and the said Act of the 14th and 15th Vict. had not been passed, would have maintained its own highways, and where part only of any such parish, place, or district is comprised in a highway district constituted under this Act, shall mean such part; the word "borough" shall mean a borough according to the meaning of the Act of the session holden in the 5 & 6 W. the 4th (a), "for the Regulation of Municipal Corporations in England and Wales," or any corporate place which since the passing of that Act has become subject to the provisions thereof; and the word "county" shall mean any county, riding, division, or liberty having a separate court of quarter sessions of the peace.

Interpretation  
 of terms.

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(a) Chapter 76.

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**Part XI.**

**CHAPTER XXXII.**

**SOUTH WALES HIGHWAY ACT AMEND-  
MENT ACT, 1878.**

41 & 42 VICT. CAP. 34.

*An Act to amend the Law relating to Highways in  
South Wales.*

[22nd July, 1878.]

23 & 24 Vict.  
c. 68.

WHEREAS it is expedient to amend an Act passed in the 23rd and 24th years of the reign of Her present Majesty, intituled "An Act for the better management and control of the highways in South Wales," which Act is in this Act called "the South Wales Highway Act:—"

Be it enacted, &c., as follows :

Act to be  
one with  
23 & 24 Vict.  
c. 68.

I. This Act shall be cited as the South Wales Highway Act Amendment Act, 1878, and, so far as is consistent with the tenor thereof, shall be construed as one with the South Wales Highway Act.

Highway  
boards may  
make im-  
provements,  
and borrow  
money for  
the purpose.

II. The highway board for each district may make such improvements as are herein mentioned in the highways within their jurisdiction, and may, with the approval of the county roads board of the county in which they are situate, borrow money for the purpose of defraying the expenses of such improvements.

Estimate of  
expense to  
be made,  
and notice  
to be given.

III. Previously to applying for the approval of the said county roads board, the highway board shall cause an estimate of the expense of the improvements to be made, and one month at the least before making their application shall give notice of their intention to do so.

Such notice shall state the following particulars : **Cap. XXXII**

- 1st. The nature of the work, the estimated amount of expense thereof, and the sum proposed to be borrowed :
- 2nd. The parish or parishes within the highway district by which the sum borrowed and interest thereon is to be paid, and in case of more than one being made liable to pay the principal and interest, the annual amounts to be contributed by each parish towards the payment thereof :
- 3rd. The number of years within which the principal monies borrowed are to be paid off, not exceeding 20 years, and the amount to be set apart in each year in paying off the same :
- 4th. The date of the meeting of the county roads board at which the application for such approval as aforesaid is to be made.

IV. Such notice shall be given as follows :

How notice  
to be given.

1. By transmitting a copy to the clerk of such county roads board :
2. By placing a copy of such notice for two successive Sundays on the door of every church and chapel of the parish or parishes on behalf of which such works are to be done, or, in the case of a parish not having a church or chapel on some conspicuous position in such parish.

Upon the hearing of the application, any person or persons may oppose the approval of the county roads board being given, and it shall be lawful for the county roads board to give or withhold their approval, with or without modification, as they think just.

V. All monies borrowed in pursuance of this Act, together with the interest thereon, shall be a first charge on the highway rates of each parish liable to contribute to the payment thereof, in the same manner, as far as the creditor is concerned, as if the money had been Monies borrowed under Act to be a first charge on highway rates of

**Part XI.**  
parishes  
liable to  
contribute.

borrowed on account of each parish alone, and the sums necessary to repay the said borrowed monies, with interest, shall in each said parish be recoverable in the same manner as if they were expenses incurred by the board in keeping in repair the highways of that parish.

But it shall be the duty of the highway board in case of any one parish paying more than its share of such borrowed money, or of the interest thereof, to make good to the parish the excess so paid out of the rates of the other parishes liable to contribute thereto.

County roads  
board may  
make orders  
as to appli-  
cation for  
consent.

VI. The county roads board may from time to time make general orders relative to the mode in which applications are to be made to them for their consent under this Act to the borrowing of any monies.

Limitation as  
to amount to  
be levied not  
to apply to  
money bor-  
rowed under  
this Act.

VII. The limitation as to the amount in the pound of the rateable value of the property to be levied in any one year imposed by sect. 24 of the South Wales Highway Act (a) shall not apply to the amount of principal and interest of money borrowed under this Act and liable to be repaid in any year.

What works  
are to be  
deemed im-  
provements  
of highways.

VIII. The following works shall be deemed to be improvements of highways :

- 1st. The conversion of any road that has not been stoned into a stoned road :
- 2nd. The widening of any road, the cutting the corners off on any road, the levelling roads, the making of a new road, the building or enlarging of bridges, and the purchase of land for any of the purposes aforesaid :
- 3rd. The doing any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair.

County roads  
board may  
order roads

IX. It shall be lawful for any county roads board at any one of their regular meetings to make an order

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(a) *Ante*, p. 525.

declaring that any highway within the county for which they act, being a main thoroughfare through any one or more highway districts to any town or towns or to any railway station or stations, shall be a district road, and from and after a day to be named in the order the cost of maintaining such district road shall be a common charge upon the highway district or districts within which such road is locally situate, and shall be borne by the several parishes within such district or districts in manner following ; (that is to say,) Cap. XXXII  
to be repaired  
out of high-  
way rate.

- (1.) Where the district road is wholly situate in one highway district, the cost of repairing the same shall be paid out of the monies levied for the repair and maintenance of the highways, and shall be apportioned amongst and charged upon the several parishes within the district in the same manner as the salaries of the clerk and treasurer of the district ; and
- (2.) Where the district road is situate in more than one highway district, the cost of repairing the part within any such district shall in like manner be paid and be apportioned amongst and charged upon the several parishes constituting the district within which such part is situate.

Provided always, that such county roads board shall, previous to making an order that any highway shall be repaired as aforesaid, give notice of their intention to proceed to make an order to that effect at a meeting of the board to be named in such notice, and shall advertise such notice in one or more of the newspapers circulating in the county, and shall cause copies of such notice to be affixed to the door of each parish church in the said highway district or districts, and shall cause to be served a copy of such notice on the clerk of such highway district or districts in which such highway or highways are situate, at least one month before the day of the meeting so named in such notice, and shall at



**Part XI.** such meeting, previous to coming to any determination, hear any person or persons who shall desire to make any objections to the proposed order being made, and shall, after such objections, if any, have been heard, proceed to make, modify, or reject such proposed order as to them shall seem just and reasonable.

Incorporation  
of certain  
clauses of  
10 & 11 Vict.  
c. 16.

X. The clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

In the construction of the said clauses "the commissioners" shall mean "the highway board."

Mortgages and transfers of mortgages shall be valid if made in the forms prescribed by the last-mentioned Act, or as near thereto as circumstances admit.

Highway  
boards may  
purchase  
lands by  
agreement.  
8 & 9 Vict.  
c. 18.

XI. A highway board, for the purpose of improving the highways within their district, may purchase such lands or easements relating to lands as they may require; and the Lands Clauses Consolidation Act, 1845, and any Act amending the same, except the clauses in the said Acts respectively relating to the purchase of lands otherwise than by agreement, shall be incorporated with this Act; and for the purposes of those Acts this Act shall be deemed the special Act, and any such highway board as aforesaid exercising the powers of this Act shall be deemed the promoters of the undertaking.

Definition of  
"parish."

XII. "Parish" in this Act means every parish or place for which a separate rate is made for the maintenance of the highways.

CHAPTER XXXIII.

Cap XXXIII

SOUTH WALES BRIDGES ACT, 1881.

44 VICT. CAP. 14.

*An Act to enable County Authorities in South Wales to take over and contribute towards certain Bridges, and to remove doubts as to the liability to repair the Highways over and adjoining certain Bridges which have been rebuilt.*

[8rd June, 1881.]

WHEREAS Part I. of the Highways and Locomotives (Amendment) Act, 1878, does not, except as to the 27th section thereof, apply to any county to which the 23 & 24 Vict. c. 68, extends:

And whereas it is expedient that powers similar to those contained in sections 21 and 22 of the first-mentioned Act, and also in section 2 of the County Bridges Loans Extension Act, 1880, for taking over and contributing towards certain bridges and for borrowing money for the latter purpose, should be conferred upon the county authorities in South Wales:

Be it therefore enacted, &c., as follows:

I. This Act may be cited as the South Wales Bridges Act, 1881, and shall extend only to the several counties in South Wales; that is to say, the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan.

Title and  
extent of Act.

II. Any bridge erected before the passing of this Act in any county without such superintendence as is provided in sect. 5 of 43 Geo. 3, c. 59, and which is

Certain  
existing  
bridges may  
be accepted

**Part XI.** certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair.

by county  
authority.  
43 Geo. 3,  
c. 59.

Contribution  
out of county  
rates towards  
erecting  
bridges.

III. The county authority may make such contribution as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected, after the same has been certified, in accordance with the provisions of section 5 of 43 Geo. 3, c. 59, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one half of the cost of erecting such bridge.

Extension of  
power to  
borrow under  
4 & 5 Vict.  
c. 49.

IV. Where the county authority see fit to make a contribution towards the cost of a bridge erected as in this Act mentioned, they may borrow on mortgage of the county rate all or any part of the amount of such contribution, in the same manner in every respect as if the amount to be borrowed had been the amount of an estimate made and approved in the manner mentioned in the Act 4 & 5 Vict. c. 49, and all the powers, directions, and provisions of that Act shall extend and apply to the monies borrowed under this Act; provided that the sum required for or towards any such contribution as aforesaid may be borrowed in exercise of the power hereby conferred, although the same shall not exceed one fourth of the amount of the ordinary annual assessment referred to in the said Act of the 4th and 5th Vict.

Repair of  
roads over  
and adjoining  
bridges  
rebuilt.

V. Where a bridge has been or shall be built by the county authority, or, with their consent, in substitution for another bridge which the county authority were liable to repair, the liability to repair the highway leading to, passing over, and next adjoining the bridge so

substituted shall attach to the county authority, highway authority, person or persons who were liable to repair the highway leading to, passing over, and next adjoining the bridge previously existing, whether the substituted bridge is built on the same site or not. Cap XXXIII

VI. In this Act—

Interpre-  
tation.

- “County” means any county, division, or liberty having a separate court of quarter sessions of the peace:
  - “County authority” means the justices of a county in general or quarter sessions assembled:
  - “Highway authority” includes a county roads board, highway board, and any other body of persons liable to repair the highways.
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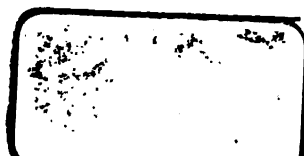
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